

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.

8
9 Transcript of excerpt of testimony of
10 EUGENE MARTINEZ
11 April 25, 2018, and April 26, 2018
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1 THE COURT: All right. Ms. Armijo, does
2 the Government have its next witness or evidence?

3 MR. CASTELLANO: Yes, Your Honor. The
4 United States calls Eugene Martinez.

5 THE COURT: All right. Mr. Martinez, if
6 you'll come up and stand next to the witness box.
7 Before you're seated, my courtroom deputy,
8 Ms. Bevel, will swear you in. Right here, sir.
9 Raise your right hand to the best of your ability,
10 sir.

11 EUGENE MICHAEL MARTINEZ,
12 after having been first duly sworn under oath,
13 was questioned, and testified as follows:

14 THE CLERK: Please be seated and please
15 state your name for the record.

16 THE WITNESS: Eugene Martinez.

17 THE COURT: Mr. Martinez. Mr. Castellano.

18 MR. CASTELLANO: Thank you, Your Honor.

19 Before I begin, I think without objection, I'm
20 moving Government's Exhibits 102, 105, and 106.

21 THE COURT: Did you give me four or three?
22 102, 105, and 106?

23 MR. CASTELLANO: That's correct, Your
24 Honor.

25 THE COURT: Any objection? Not seeing or

1 hearing any, Government's Exhibits 102, 105, and 106
2 will be admitted into evidence.

3 (Government Exhibits 102, 105, and 106
4 admitted.)

5 THE COURT: Mr. Castellano.

6 MR. CASTELLANO: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. CASTELLANO:

9 Q. Good afternoon, Mr. Martinez. Can you
10 please tell us your name and your age?

11 A. Eugene Michael Martinez, and I'm 38.

12 Q. Sir, how far did you go in school?

13 A. I completed the eighth grade. I went up
14 to the ninth, but I never completed it.

15 Q. Did you ever get your GED?

16 A. No.

17 Q. At some point when you were a teenager,
18 did you find yourself at the Bernalillo County
19 Detention Center?

20 A. Yes, I did.

21 Q. How old were you?

22 A. I was about 16 and a half, 17.

23 Q. And was that an adult facility at that
24 time?

25 A. Yes, it was.

1 Q. And had you committed a crime as a
2 juvenile where they were holding you there as an
3 adult?

4 A. Yes.

5 Q. What was that?

6 A. Robbery, and I think -- just robbery.

7 Q. And did you have trouble with the law when
8 you were a teenager?

9 A. Yes, I had several run-ins with the law.

10 Q. And I want to ask you about something else
11 that happened when you were younger. Can you tell
12 the members of the jury when you were younger,
13 whether you saw your father and your brother killed?

14 A. Yeah, I was in Albuquerque, New Mexico.

15 Q. About how old were you?

16 A. I was probably about 11. Between 11 and
17 12.

18 Q. How did that affect you?

19 A. It --

20 MR. SINDEL: Your Honor, I'm sorry.

21 A. Yeah, it affected me.

22 THE COURT: Hold on.

23 MR. SINDEL: I just don't understand the
24 relevance. It's certainly sad.

25 THE COURT: I think it goes back a little

1 too far. Sustained.

2 BY MR. CASTELLANO:

3 Q. Needless to say, then, did you find
4 yourself getting into trouble as a juvenile?

5 A. Yes, I did.

6 Q. Going back to the Bernalillo County
7 Detention Center, I want to ask you if you had a
8 confrontation with somebody while you were there.

9 A. Yes, I did.

10 Q. What was it over?

11 A. It was over a pair of shoes. I was a
12 teenager, and I got into the pod, and immediately I
13 was targeted. And eventually they stole my shoes,
14 and I got in an altercation over it.

15 Q. Who was the person who stole your shoes?

16 A. Mike Ramirez.

17 Q. And what happened as a result of that
18 altercation?

19 A. There was a fight, a little scuffle, and
20 in the process I stabbed him and got my shoes back.

21 Q. Are you aware of whether or not he was a
22 member of any type of gang?

23 A. He was from the San Jose Albuquerque gang
24 and the Los Carnales prison gang.

25 Q. And after this assault, did you start

1 receiving anything from anybody at the facility?

2 A. Once I went to lockup, several guys from
3 SNM, guys that I knew from juvenile and guys that I
4 didn't know, just started giving me, like, special
5 treatment, because I guess they had problems with
6 that guy, Mike Ramirez, and they were happy because
7 of what happened. So we kind of started, you know,
8 like, started earning respect and they would send
9 me...

10 Q. What all did you receive? What was sent
11 to you?

12 A. I got like commissary, heroin, weed,
13 whatever kind of narcotics would come in; and things
14 that you do in there that are illegal, I was
15 receiving.

16 Q. Who were some of the people who delivered
17 the drugs to you?

18 A. COs; crooked cops would bring it from one
19 floor to another. They were sent by other SNM
20 members. It would always come from -- I was in 3
21 Southeast; it would always come from 3 North. That
22 was, like, the old school pod for all of the prison,
23 so when they go to the county jail.

24 Q. Now, when you stabbed Mike Ramirez, were
25 you aware of any kind of war going on between Los

1 Carnales and SNM? Did you know anything about that?

2 A. I had somewhat of an idea, but what
3 happened between me and him had nothing to do with
4 Los Carnales and SNM. It was just simply for the
5 fact that he had stole my shoes while I was at
6 court. And I know if you're going to prison and you
7 let someone do that one time, they'll continue to do
8 it.

9 Q. I'm going to show you what's been admitted
10 as Government's Exhibit 102. And the page number is
11 at the bottom, 8604. I'm going to circle first the
12 date, April 29, 1998.

13 A. Yes.

14 Q. I'm going to circle a crime here,
15 possession of a deadly weapon, in parentheses it
16 says "a shank."

17 A. Yes.

18 Q. Does this conviction relate to that
19 incident?

20 A. Yes. I pleaded guilty to the shank, and
21 they dropped the assault and battery. The shank was
22 a higher amount of time than the assault. It was
23 nine years for the knife and 18 months for the
24 assault. And I just pleaded guilty to it, just to
25 get it over with.

1 Q. When you pled guilty to this, were you an
2 adult at that time?

3 A. I just had turned 18, I believe.

4 Q. I think you said as a result of this
5 assault, you then began getting attention from SNM
6 Gang members?

7 A. Oh, yes. I got attention.

8 Q. Okay. First of all, what happened to the
9 charge that was pending against you when you first
10 arrived at BCDC?

11 A. It was still pending. It ran with the
12 other charges. I had several; four robbery charges,
13 and I know two of them were sentenced as a juvenile
14 and two of them went as an adult. Somewhere in
15 between, I don't know how it happened, but it
16 happened, and then they ran the shank with the rest
17 of everything else, concurrent.

18 Q. You mentioned that people began sending
19 you drugs. Were you using drugs as a teenager?

20 A. Yes.

21 Q. What did you use as a teenager?

22 A. I used -- started with weed and some spray
23 paint, to probably mushrooms, acid, and then I went,
24 like, a lot on coke, crack, eventually to heroin.

25 Q. You mentioned coke and crack. Is there

1 such a thing as powder cocaine and crack cocaine?

2 A. Yes.

3 Q. And had you used both of those as a
4 teenager?

5 A. Yes.

6 Q. How young were you when you began using
7 drugs?

8 A. Since maybe, like, nine, ten years old.

9 Q. When people sent you drugs at the
10 facility, did you use those drugs?

11 A. Yes.

12 Q. Did you stay at the Bernalillo County
13 Detention Center, or did you eventually get moved to
14 a different facility?

15 A. I eventually got moved to prison.

16 Q. Where did you go for starters?

17 A. I went to Grants facility in New Mexico,
18 and it's RDC.

19 Q. And do you know what the purpose of going
20 to a facility known as RDC is?

21 A. Yes, just to pick up your number and,
22 like, a transfer center, and they transfer you to
23 whatever main facility you're going to.

24 Q. What facility did you go to from there?

25 A. Estancia, New Mexico.

1 Q. Was that an adult prison?

2 A. Yes.

3 Q. About how old were you?

4 A. I was 18.

5 Q. Did anyone there approach you about
6 joining the SNM prison gang?

7 A. Several months afterwards, yes.

8 Q. Who was it?

9 A. Lazy Herrera.

10 Q. Anybody else?

11 A. Juanito Mendez. And then after that, I
12 was approached -- well, not approached. We took it
13 to Billy Garcia.

14 Q. And did you know Billy Garcia by any other
15 name?

16 A. Wild Bill.

17 Q. Did those people begin to look after you?

18 A. Somewhat, yes.

19 Q. And were those people aware of what had
20 happened to your dad and to your brother?

21 A. Yes.

22 Q. And were the people who killed your dad
23 and your brother Los Carnales gang members?

24 A. Yes, he was. Yes, he is.

25 Q. When you arrived at the facility, were

1 there any fights going on between any rival gangs?

2 A. No, there was --

3 MR. GRANBERG: Objection, Your Honor,
4 relevance.

5 THE COURT: What's the relevance of this
6 time period and rival gangs?

7 MR. CASTELLANO: It's his background and
8 into the SNM, Your Honor.

9 THE COURT: Is it going to tie directly
10 into SNM, his entry into it?

11 MR. CASTELLANO: It will tie into the gang
12 activity.

13 THE COURT: I'll sustain.

14 BY MR. CASTELLANO:

15 Q. So you mentioned Carlos Herrera, Juan
16 Mendez, and eventually Billy Garcia as people who
17 moved you into the gang?

18 A. Yes.

19 Q. At any point in time did anyone explain
20 the rules to you of the gang?

21 A. They explained it somewhat, not in full
22 detail, or I didn't know the extent of what really
23 goes on.

24 Q. What did you know at the beginning?

25 A. I thought it was, like, just kind of like

1 a family situation, like just a bunch of people. We
2 were all from broken homes, and from the street, and
3 stuff, and to protect each other. There was younger
4 guys and we would look out, because there was, you
5 know, older, predators or whatever, so we would just
6 look out for each other.

7 Q. At some point in time did you learn what
8 rules were for ratting or cooperating with law
9 enforcement?

10 A. Death.

11 Q. Were people allowed to have sex offenses
12 in their history?

13 A. If they had money and drugs, you could be
14 a sex offender, a rapist, child molester, a rat,
15 whatever. If you have money and drugs, you're
16 golden.

17 Q. What if you didn't?

18 A. You'd get killed.

19 Q. You mentioned this was kind of a family
20 situation, as you saw it, when you joined. Were you
21 guys supposed to help each other out?

22 A. Yes, look out for each other with drugs
23 and food and protection and whatever else. If you
24 were getting attacked, you're supposed to be there
25 for your brother.

1 Q. So if your brother is getting attacked,
2 you had to join in and back him up?

3 A. Immediately. If you didn't, you would be
4 hit.

5 Q. And what kind of role did respect play
6 within the gang?

7 A. Say that again?

8 Q. What kind of role did respect have within
9 the gang?

10 A. It had a lot as far as, you know, doing
11 hits or whatever, you would earn more respect and
12 people look up more to you.

13 Q. Now, was the SNM Gang at that time moving
14 drugs in and out and through the facility?

15 A. Yes.

16 Q. What types of drugs?

17 A. Mainly heroin, coke, and weed.

18 Q. And did you yourself ever run drugs across
19 the facility or deliver drugs to people?

20 A. Yes, I ran small amounts just to take to
21 the gym or to the yard or whatever, just to drop off
22 to one person to the other.

23 Q. And were those types of things expected of
24 you as an SNM member?

25 A. Yes.

1 Q. Did you ever become aware of an issue
2 regarding someone named Felipe Cordova and another
3 person known as Babalu and a dispute they had over a
4 drug mule?

5 A. Yes, I did.

6 Q. And did you know Babalu by any other
7 names?

8 A. I didn't.

9 Q. You just knew him by Babalu?

10 A. I think his last name was Ortega, but I'm
11 not too sure. I know him as Babalu.

12 MR. CASTLE: Your Honor, may we approach?

13 THE COURT: You may.

14 (The following proceedings were held at
15 the bench.)

16 MR. CASTLE: This is an issue that we were
17 talking about, the Bobby Ortega murder. We were
18 requesting the Court to exclude that evidence until
19 the Court is -- there were five men indicted, five
20 men convicted, not including Mr. Garcia. When this
21 witness was first asked about this, in 2011, he said
22 it was Felipe Cordova that ordered it. That has
23 changed as of March 28 of this year. We're going to
24 have to put on evidence to defend against another
25 murder.

1 THE COURT: What is he saying now?

2 MR. CASTLE: He's saying now that
3 Mr. Garcia said -- ordered it. So this is the
4 issue. Well, actually, I think he's saying that
5 somebody else said that Mr. Garcia did the --

6 MR. CASTELLANO: He won't be able to
7 answer the question as hearsay. Actually, that is
8 the statement he gave in May of last year.

9 MR. CASTLE: I'm sorry --

10 MR. CASTELLANO: What he'll be able to say
11 is the facility he was in -- there will be a dispute
12 about the drug issue. He was about to talk about
13 it. And then when he and a bunch of others got in,
14 moved on -- his first name is Babalu, his last name
15 is Ortega -- was murdered by SNM Gang members over
16 there; and that he had discussion with Robert
17 Lovato, who told him what happened. After that, he
18 knows the answer but he can't say. It's hearsay,
19 and I'm not going to elicit it. I'm only going to
20 say, did he talk to Robert Lovato about the murder,
21 that it was an SNM murder, and did Robert Lovato
22 tell him who ordered it, without saying explicitly
23 tell him, without telling names, who ordered the
24 hit. I'm not trying to elicit any names from this
25 witness about that. But it is an SNM murder, so I

1 think it is racketeering activity.

2 THE COURT: If that's all we're doing with
3 this witness, lead him through it and that's all he
4 gets.

5 MR. CASTLE: It's still hearsay. They
6 didn't tell who committed the murder. That's
7 imparting the fact that the declarant said, "I know
8 who did the murder." That's still part hearsay.

9 THE COURT: Well, I'm not --

10 MR. CASTLE: The source of that
11 information.

12 THE COURT: I'm not sure, though, that
13 that would be hearsay. What is the problem with
14 that?

15 MR. CASTLE: Hearsay. I think it's
16 another murder case. What we're going to be asking
17 the Court to do is exclude that information, and
18 we're going to have to endorse several witnesses
19 because people have testified about this in the
20 past. They said it was somebody else who ordered
21 the murders. And I'm going to be asking the Court
22 for sanctions and dismissal. Mr. Felipe Cordova,
23 who did order the murder, is dead now, not because
24 he was murdered; he died some other way.

25 THE COURT: These questions you've just

1 outlined, that's it with Babalu; that's all with
2 this witness?

3 MR. CASTELLANO: He was at Hobbs when he
4 was murdered and had discussions with people
5 involved, it was SNM. And that person told him who
6 did it.

7 THE COURT: When you keep saying the
8 person was SNM, you're saying the person he talked
9 to was SNM?

10 MR. CASTELLANO: Babalu was SNM, and
11 Robert Lovato.

12 THE COURT: But he knew this from his
13 personal knowledge?

14 MR. CASTELLANO: Yes.

15 THE COURT: Well, right at the moment, I
16 don't think I have to make a decision on everything
17 about Babalu right at the moment. I think the
18 statement is coming down the road and you're going
19 to want to deal with it. I'll go ahead and allow
20 this. Then we'll make a determination down the road
21 after you've had a chance to tell me more about what
22 the problems are with this. So lead him through it
23 so he doesn't spill into any hearsay.

24 MR. COOPER: Your Honor, I think that once
25 we put Robert Lovato's name out there today with

1 this question, even though he doesn't say who it is
2 that made the call, I think the jury is going to
3 wonder who that was directed at. And it can only be
4 one of seven people, and I think it's creating an
5 inference, and we can't fight that inference. And
6 there's going to be two people cross-examining this
7 witness -- I'm one of them -- on behalf of Billy
8 Ortiz -- I mean, Billy Garcia, excuse me. All the
9 testimony coming out of this witness is going to be
10 directed at people who are leaders at Estancia. So
11 I think if he says, "Robert Lovato told me that a
12 leader at Estancia called the hit," the jury looks
13 at this group of defendants, they're going to say
14 it's me, even if he --

15 THE COURT: You're not going to elicit
16 that, are you?

17 MR. CASTELLANO: That's correct. And the
18 jury doesn't have to infer that, like the Javier
19 Molina murder and other murders committed by other
20 people who were not involved with these defendants
21 in court. So it has to do with enterprise and not
22 the defendants in court. That's not an inference
23 the jury has to make.

24 THE COURT: I'll allow the questions here.
25 Then, if you feel like you have to do something with

1 it, you'll have to do something with it. But I
2 think it's going to leave us options down the road
3 to decide whether we're going to go further into
4 this murder.

5 MR. COOPER: The problem is, we have no
6 options, if you allow him to even mention Robert
7 Lovato's name when you get --

8 THE COURT: You're not going to mention
9 his name.

10 MR. CASTELLANO: I was going to ask him if
11 he had discussions with Robert Lovato being involved
12 with the murder. And Robert Lovato is an SNM Gang
13 member, and Babalu was, and asking if Robert Lovato,
14 without saying names, told him who ordered the
15 murder.

16 MR. COOPER: We can't defend against that.
17 I mean, there is only one leader among this group
18 that was at Torrance at that time. And the
19 inference is it was Billy Garcia that called the
20 hit. And that's what we're trying to -- that's why
21 we're raising the Babalu murder. They gave us
22 notice that they were going to use this on the
23 Friday before trial started. And we're not prepared
24 to defend that murder. And I think when he mentions
25 Robert Lovato's name, it's going to put us in a

1 position of having to defend that. I don't want to
2 be there.

3 MR. CASTELLANO: There is nothing from the
4 proffered evidence that says Torrance County.

5 THE COURT: I'm going to allow it. And
6 the defense will have to make a decision how to deal
7 with it. But I think the questions are appropriate.

8 MR. COOPER: Thank you.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. Mr. Castellano.

12 MR. CASTELLANO: Thank you, Your Honor.

13 BY MR. CASTELLANO:

14 Q. Okay. Mr. Martinez, you were telling us
15 about a drug dispute regarding the same mule, and
16 two people, one named Felipe Cordova, and the other
17 you just knew as Babalu; is that correct?

18 A. Yes.

19 Q. And were each of those two people SNM Gang
20 members?

21 A. Yes.

22 Q. And which facility was this where this
23 dispute started?

24 A. Estancia, New Mexico.

25 Q. At some point in time, were you and others

1 moved from Estancia to another facility?

2 A. Yes, we were moved to Hobbs, New Mexico;
3 Lea County.

4 Q. Was that another prison facility?

5 A. Yes.

6 Q. And was Babalu one of the people who moved
7 to Hobbs with you?

8 A. Yes.

9 Q. What happened to Babalu at the Hobbs
10 facility?

11 A. He was murdered the next morning after
12 arrival.

13 Q. Are you aware whether or not this was an
14 SNM hit?

15 A. Yes, it was an SNM hit.

16 Q. And you know that because you spoke to one
17 of the people who actually killed Babalu?

18 A. Yes.

19 MR. COOPER: Objection, hearsay.

20 THE COURT: Sustained. The jury will
21 disregard that question and answer.

22 BY MR. CASTELLANO:

23 Q. Okay. So did you know that this was an
24 SNM hit?

25 A. Yes.

1 Q. And without saying anything, did a person
2 you talked to -- without saying names, is it fair to
3 say the person you talked to told you who ordered
4 the hit?

5 MR. COOPER: Objection, hearsay.

6 A. Yes.

7 THE COURT: Overruled.

8 BY MR. CASTELLANO:

9 Q. Did you talk to -- did you discuss this
10 information with somebody named Robert Lovato?

11 A. Yes.

12 Q. When you got to Hobbs, what were you
13 generally doing at the facility?

14 A. Doing time, drugs; that's it.

15 Q. Did the facility offer you any kind of
16 education classes or anything like that?

17 A. Oh, yes. I was enrolled in school. I was
18 doing that for help.

19 Q. What types of things would you study at
20 school in prison?

21 A. I was just studying my GED in Hobbs.

22 Q. Did you ever complete that process?

23 A. No.

24 Q. If you recall, about how long did you stay
25 at Hobbs?

1 A. About four to six months. I don't know
2 the exact date.

3 Q. And from there, where did you move?

4 A. I went to Las Cruces, stayed there for a
5 short period at the POU. Then I ended up in Los
6 Lunas, Santa Fe, and back to Cruces.

7 Q. You mentioned POU. What does that stand
8 for?

9 A. Paul Oliver Unit. It's like a low, low
10 prison.

11 Q. Is it a lower level of security?

12 A. Yes.

13 Q. I want to ask you if you lived at the
14 Southern New Mexico Correctional Facility in 2001.

15 A. Yes, I did.

16 Q. When you first got there, in which pod
17 were you living?

18 A. I was living in O2.

19 Q. And do you remember which pod it was?

20 A. I don't remember. It goes by colors. I
21 don't remember the color, but it was the middle pod.

22 Q. And for the jury, who might not know, how
23 many pods would there be in a housing unit?

24 A. There are three pods in a housing unit set
25 up like in an L, an L shape, and there is a middle

1 pod and there's two surrounding pods. I was in the
2 middle pod.

3 Q. When you were at that pod in Southern, was
4 that the one here in Las Cruces?

5 A. Yes.

6 Q. Can you tell the members of the jury
7 whether the drugs were still moving through the
8 prison at that time?

9 A. Oh, yes. It was contact visits. So there
10 was plenty of drugs, and the prison was so corrupt,
11 the COs and sergeants, lieutenants, up to the
12 wardens were corrupt. So it was a party.

13 Q. At some time when you were in that unit,
14 were you getting close to the time you should get
15 out of prison?

16 A. Yes, I started approaching within months
17 of my release. And due to all the drugs, I kept
18 getting dirty urines, so I asked for -- to move to
19 another unit.

20 Q. Why did you want to move to another unit?

21 A. Because I was trying to get -- to go home,
22 and I kept getting dirty urines. So I figured if I
23 moved to a unit where I thought it was more calmer,
24 there was less drugs, I would have a better chance
25 of going home.

1 Q. And did the prison facility test you to
2 see if you were using drugs?

3 A. Yes.

4 Q. What would happen if you would have a
5 dirty urinalysis?

6 A. You would lose good time.

7 Q. So every time you turned in a dirty urine,
8 did that kind of take you farther from the door
9 rather than closer?

10 A. Yes.

11 Q. Was that something you were trying to
12 avoid?

13 A. Yes.

14 Q. As a result of your request, did you get
15 moved to another unit?

16 A. Yes, I did.

17 Q. Where were you moved?

18 A. I was moved to O-1, yellow.

19 Q. And at some point in time did someone else
20 move into that pod?

21 A. Yes.

22 Q. I'm going to -- I'll just ask you, did
23 Rolando Garza move into that pod?

24 A. Yes, he was in there, I think, few days, a
25 week maybe, or a few days before I moved in.

1 Q. Mr. Martinez, I want to show you I think
2 Exhibit 104. Hopefully I have the right number.
3 Okay. Do you see this exhibit here in front of you?

4 A. Yes.

5 Q. I'm going to show you -- I'm going to put
6 a little line next to an entry there which says
7 "February 1st, 2000, to August 8, 2000, Southern, or
8 S, O-2." Is that the O-2 pod?

9 A. Yes, that was the first pod I lived in.

10 Q. And then when it says "Y 2230," does Y
11 stand for yellow pod?

12 A. Yes.

13 Q. And does the 2230 stand for the cell that
14 you were living in?

15 A. Yes.

16 Q. And do you recall if the yellow pod was
17 the middle pod in that unit?

18 A. Yes.

19 Q. Now, eventually it shows you, once again,
20 in the next entry above that one -- shows Southern
21 O-2, which is the housing unit?

22 A. Yes.

23 Q. Then Y for yellow pod and 1150. Do you
24 see that?

25 A. Yes.

1 Q. So at that point were you still in O-2,
2 O-2 referring to the housing unit?

3 A. Yes.

4 Q. And then I'm showing you -- or making a
5 mark next to December 4, 2000, to February 7, 2001,
6 a move to Southern O-1 pod, or housing unit.

7 A. Yes.

8 Q. Was that also known as Ocean 1?

9 A. Yes.

10 Q. And then eventually, I think you said you
11 moved to the yellow pod?

12 A. Yes.

13 Q. I'm going to circle it. In the middle of
14 that circle, do you see February 7, 2001, to June
15 11, 2001, Ocean 1, yellow or Y, and then 2215?

16 A. Yes.

17 Q. Can you tell us whether you were living in
18 the yellow pod in cell 2215?

19 A. Yes, I was.

20 Q. Now, during that time, when you moved into
21 that pod, during the time you were living there, I
22 want to ask you if you had a conversation with
23 somebody named Leonard Lujan.

24 A. Yes.

25 Q. What can you tell us about that

1 conversation?

2 A. It wasn't in the pod. But I was
3 arriving -- I was coming back from a visit Sunday
4 afternoon, and I was getting ready to make my way
5 into the main corridor. There's a gate right before
6 you get to the pod. And Leonard Lujan was outside,
7 kind of behind the chapel, just lingering around,
8 and he seen me going into the O-1 unit, and he
9 whistled and called me to, like, come back to talk
10 to me.

11 And he asked me -- he's like, "You live
12 over there now?"

13 I told him, "Yeah, I moved over here."

14 Because the last thing he knew, I was in
15 O-2. And he said, "Well, what pod do you live in?"

16 I said, "I live in yellow pod."

17 He said, "All right. Well, go in there
18 and talk to -- organize something, and organize --
19 get a few people together, talk to" --

20 I told him who was in there. He asked who
21 is more or less the older guys that were in there,
22 and I told him. And he said, "Go in there and talk
23 to them."

24 One of them was Willie Amador, and Jesse
25 Ibarra, and --

1 Q. What did he tell you to organize with
2 those guys?

3 A. To organize a team of a few people to go
4 in there and handle -- handle Rolando Garza.

5 Q. Now, when you said, using your terms,
6 handle Rolando Garza, what was he asking you to do?

7 A. Basically go in there and handle it, hurt
8 him, kill him. It was -- there was many people for
9 months -- there was a lot of talk about him getting
10 killed; and others, as well. So it wasn't, like,
11 something fresh. It was continuous talk about these
12 hits. So when he approached me --

13 MR. GRANBERG: Objection, Your Honor,
14 hearsay.

15 THE COURT: I think I've ruled on these.
16 Overruled.

17 BY MR. CASTELLANO:

18 Q. Let me stop you there. When you talk
19 about that, was it news to you, from these
20 conversations, that Rolando Garza was potentially in
21 trouble with the gang?

22 A. No.

23 Q. And was Rolando Garza an SNM Gang member?

24 A. Yes.

25 Q. Did you know whether or not Leonard Lujan

1 was an SNM Gang member?

2 A. Yes.

3 Q. Eventually, in your time in the gang, what
4 did you learn about the rules when it came to an
5 order and whether you had to follow it?

6 A. If they approached you and ordered you to
7 do a hit, you have to do it, or you'll get killed,
8 you'll be hit, too, or a violation.

9 Q. When Leonard Lujan approached you, did you
10 feel that this is something you had to do, based on
11 the gang's rules?

12 A. Yes, I did.

13 Q. And what did you do with this information?
14 He told you to approach Willie Amador and Jesse
15 Ibarra. What did you do with that information?

16 A. I approached him and told him -- before I
17 approached him, I don't really communicate with
18 Leonard. We have just our differences. So when he
19 told me, I didn't want to accept it from him, but
20 just knowing the fact that Billy Garcia was there, I
21 figured this was true, because the way he would act
22 before Billy pulled up, and when Billy pulled up he
23 acted -- he just came -- he acted a whole different
24 way. So I knew it was pretty much true. But I
25 wanted to make sure.

1 Q. Let me ask you this. You mentioned the
2 words "when Billy drove up." What does that mean,
3 when you say someone drove up to a facility?

4 A. Where he was transported from one facility
5 to the next.

6 Q. At some point do you remember when Billy
7 Garcia arrived at Southern?

8 A. Yes.

9 Q. Do you recall what the atmosphere was like
10 once he arrived?

11 A. Right. Well, before he arrived, it was
12 like, it was a full running prison operation.
13 Everyone was running around, school, drugs, back and
14 forth, work.

15 When he pulled up, he was in orientation,
16 and it just -- it was like a ghost town. You
17 wouldn't see people out in the yard, going to
18 school. Everyone was hiding in their rooms. Just
19 fear, you know. You could feel it.

20 Q. So would you say Billy Garcia was somebody
21 that even other SNM Gang members feared and
22 respected?

23 MR. COOPER: Objection, leading.

24 A. Yes.

25 THE COURT: Overruled.

1 BY MR. CASTELLANO:

2 Q. I'm sorry, was the answer yes?

3 A. Yes.

4 Q. And if you recall, who was in charge of
5 the facility in terms of the gang before Billy
6 Garcia arrived?

7 A. For a long period, it was Lino G. I don't
8 know his last name, and T Bone. They were kind of
9 both calling shots, and eventually ended up getting
10 locked up for another incident that happened. And
11 right when Billy pulled up, it was kind of just a
12 little chaos. There was no structure, there was
13 no -- there was a few people that were trying to
14 step up, but a lot of other people were just
15 ignoring. Everyone was kind of doing their own
16 thing for maybe a month.

17 Q. Okay. Now, in terms of people trying to
18 step up, was one of those people Leroy Lucero?

19 A. Yes.

20 Q. Did you also know him as Smurf?

21 A. Yes.

22 Q. You said some people were falling in line,
23 some people weren't, what was going on even in terms
24 of Leroy Lucero and people falling in line with him?

25 A. Yes.

1 Q. So what would you say Leroy Lucero was
2 doing that time in terms of being a leader of the
3 gang?

4 A. He was trying to keep peace. He was about
5 to go home, too. He eventually did go home. He
6 just wanted to make it home. He was trying to keep
7 peace. He also had brought in Rolando Garza. And he
8 knew that -- he brought him in. If Rolando Garza
9 messed up, he had to be the one to take him out.

10 Q. Can you explain that to the members of the
11 jury in terms of once you sponsor someone into the
12 gang, what are your responsibilities for the person
13 you bring in?

14 A. Yes. If you bring in, sponsor someone
15 into the organization, and they mess up, they
16 violate, it's your job to take them out, and whoever
17 else sponsored him.

18 Q. And so was Leroy Lucero in a position
19 where he might have to take out Mr. Garza?

20 A. Yes. "Take out" is a term as killing
21 someone.

22 Q. And when you were there, and he was in
23 that position, did Leroy Lucero kill Mr. Garza?

24 A. No.

25 Q. Did you know Mr. Garza by any other names?

1 A. Looney.

2 Q. Now, you mentioned you had some
3 differences with Leonard Lujan?

4 A. Yes, I did. The whole facility, a lot of
5 members did. He was -- I am not prejudiced, I don't
6 care what you do, but he was a homosexual. He was
7 caught in the chapel doing homosexual activities.
8 So a lot of people just pushed him away. And they
9 warned him many times about doing that in the
10 chapel. He'd be at school, in the bathroom. And I
11 stayed away from that. I just stayed away from
12 that. I didn't feel comfortable, so --

13 Q. Let me ask you this. Since you had
14 differences with him, how did you feel about him
15 giving you this information? Did he tell you where
16 the order came from?

17 A. Yes.

18 Q. Who did he say it came from?

19 A. Billy Garcia, Wild Bill.

20 Q. And since it came from Leonard Lujan, did
21 you want to verify that information with anybody?

22 A. Yes. I didn't want to accept it at all
23 from him.

24 Q. So what did you do to verify that
25 information?

1 A. I went to the school, to the legal
2 library, because I was just coming out of the visit,
3 walking down a corridor, and you walk right in front
4 of the library. And there's a big window, and
5 there's always a lot of people in the legal library
6 waiting for people that come out of the visit,
7 whoever is bringing drugs, or whatever, and they
8 stop them, jam them up, "Hey, what's up, inmate,"
9 whatever.

10 Q. Let's stop and discuss that for a second.
11 Was the library being used as a library?

12 A. At that point, no.

13 Q. And by that I mean, were people using it
14 for other purposes?

15 A. Yes.

16 Q. So when people had visits, would they pass
17 through that area on the way back to their pods?

18 A. Yes, and some would immediately turn into
19 the library area, and get taken into the restroom
20 and pull out -- if they were bringing in drugs for
21 one person, or people would just stop them, like
22 roadblock them, and they would get roadblocked.

23 Q. Was that something the SNM would do to
24 people?

25 A. Yes.

1 Q. And so using a term, would they bulldog
2 people for their dope?

3 A. Yes.

4 Q. So at this point in time, is that where
5 you found Billy Garcia?

6 A. Yes.

7 Q. And did you have a conversation with him?

8 A. A short period, conversation.

9 Q. And how did you know Billy Garcia?

10 A. I knew Billy Garcia because he brought me
11 into the SNM in Estancia in 1998.

12 Q. So tell us about this conversation you had
13 with him, please.

14 A. I just walked in. And I called him and I
15 told him, "Hey, this hoto Leonard just came and
16 approached me with this information about tomorrow
17 morning, for this to get handled." And I just told
18 him, I told him, "Si or no?" Like yes or no.

19 And he just said, "Yeah, simon."

20 And that was it. There was no other --
21 and then he just asked me: "How you doing? How
22 have you been doing?"

23 I told him, "I'm doing all right. I'm
24 doing good. I'm about to get out. I got, like,
25 four months."

1 He just said, "All right, carnalito, be
2 careful. Good luck."

3 Q. When he said, "Yeah, simon," what did you
4 understand that to mean?

5 A. Yes, handle it. There is no hesitation.
6 If you show any fear or hesitation, they'll just be,
7 like, "Oh, no, it's all good," and then you're next.

8 Q. Did you take that to mean that Billy
9 Garcia approved the murder on Garza?

10 A. Yes.

11 Q. And you used a term a second ago. I'm
12 going to ask you to explain it for those who don't
13 understand it. When you called him "hoto Leonard,"
14 what does that mean?

15 A. Just a homosexual, a male homosexual, gay
16 guy.

17 Q. Is "hoto" a Spanish word for homosexual?

18 A. It's a Spanglish slang, Spanish term that
19 we use.

20 Q. So once Billy Garcia basically confirmed
21 the hit, what did you do next?

22 A. I went back to my pod and talked to Willie
23 Amador.

24 Q. And tell us about that discussion, please.

25 A. I approached him, called him. He lived on

1 the top tier with me. He was my neighbor. I just
2 approached him and told him, "Hey, Leonard just
3 confirmed to me, I hear outside, he told me about
4 this, about Looney."

5 I didn't mention nothing about Billy, that
6 I talked to Billy. I just told him that I talked to
7 Leonard. When I said "Leonard," he didn't -- he
8 didn't really want to accept it, hearing it from
9 Leonard, but he knew; he knew who arrived, and
10 guaranteed it was true, but when I said "Leonard" he
11 was, like, he didn't want to accept it, but he said,
12 "I'll go out and figure it out after count, see
13 what's going on."

14 Q. Do you know if he went anywhere to discuss
15 this with anyone else?

16 A. I know he went out, but I don't know who
17 he exactly talked to. But I know he did come back.
18 After visits, they do a count, 15-minute count.
19 They open the doors, then they start running chow.
20 This was afternoon dinner. And then from dinner,
21 you can go to the gym. I didn't go to the dinner or
22 the gym. I just came back from the visit, and I was
23 just real quiet, to myself.

24 Q. What went through your mind once you got
25 this information?

1 A. I was kind of nervous. I was nervous
2 about -- I didn't feel too -- I didn't think I was
3 going to be involved in it. I was figuring out,
4 sidestep it. I didn't -- there was a lot of stuff
5 going, but I didn't feel that I was going to get
6 involved in it at that point.

7 Q. When you didn't think you were going to
8 get involved, did you think you were just conveying
9 the message about the hit on Looney?

10 A. Yes.

11 Q. Did you do that?

12 A. Yes.

13 Q. And what eventually happened with Willie
14 Amador related to the Looney hit?

15 A. Yes, he went to dinner, to the gym. He
16 came back an hour and a half, almost two hours
17 later. He came into the pod. He walked upstairs.
18 And as soon as he came in, I walked out of my room
19 and told him, "Hey, what's going on?"

20 He said, "Yeah, it's going down tomorrow
21 morning."

22 Q. So did you say that this was on a Sunday?

23 A. It was on a Sunday, March 25.

24 Q. Now, at that point, when you had a
25 conversation with Willie Amador, did you make any

1 other plans with him about Looney?

2 A. Not really. It was just kind of up in the
3 air, but we were kind of throwing suggestions
4 around. He was getting out, too. A lot of us were
5 getting out. So we were all trying to sidestep it.

6 Q. And did Billy Garcia know that you were
7 getting out soon?

8 A. Yes.

9 Q. Did he mention that to you during your
10 conversation?

11 A. Yes. He just -- he just said, "Good
12 luck," and you know, "Do good. Stay out. Stay
13 out."

14 Q. Then when you talked to Leonard Lujan, did
15 you know how Mr. Garza was supposed to die?

16 A. Strangulation.

17 Q. Who told you that?

18 A. He did.

19 Q. Now, when you spoke to him, were you aware
20 of any other murders that were supposed to happen
21 that weekend?

22 A. I didn't know exactly specific things, but
23 I knew when Billy Garcia pulled up, like, four
24 people checked it in. "Checked it in" is a term
25 that -- doing something, fighting with the guard,

1 doing something real bad to get locked up, so they
2 could avoid death. They knew --

3 MR. SINDEL: Your Honor, I'm going to
4 object to the conclusion and speculation and
5 possible hearsay without a foundation.

6 THE COURT: Are you ready to ask another
7 question, to --

8 MR. CASTELLANO: I can ask another
9 question, Your Honor.

10 THE COURT: -- see where we're going?
11 BY MR. CASTELLANO:

12 Q. Let's just work on the timing. You said
13 that Billy Garcia arrived at the facility?

14 A. Yes.

15 Q. And then four people checked it in?

16 A. Yes.

17 Q. What does it mean, to check it in?

18 A. To do something on purpose to go to
19 lockup.

20 MR. SINDEL: Your Honor, I believe there
21 are multiple definitions of terms of people going
22 into protective custody.

23 THE COURT: Well, I'll let him give his
24 term, if that's what it is. You can go into it on
25 cross. Overruled.

1 BY MR. CASTELLANO:

2 Q. Okay. You said it means what?

3 A. Do things to go to voluntary protective
4 custody.

5 Q. And what are the ways you can go into
6 protective custody?

7 A. I seen one guy spit on a CO's face.
8 Another guy during that time was working in the
9 kitchen and he started a fight with one of the food
10 stewards. And just things that would cause a little
11 bit of attention to get you. And they would do
12 stuff like that, so it didn't look like they were
13 asking for protective custody. They would get a
14 writeup, and they would slither their way out of it.

15 Q. So what's the difference between spitting
16 on a guard and getting yourself into trouble and
17 just asking to be moved into protective custody?

18 A. If you ask to be moved to protective
19 custody and SNM finds out, you'll be hit. You're
20 not supposed to check it in or PC. That's weak in
21 the eyes of SNM.

22 Q. At some point in time, did you learn who
23 was supposed to be involved with the Looney murder?

24 A. Yes.

25 Q. Who was supposed to be involved?

1 A. Ray Molina, Boxer, a/k/a Boxer, was
2 supposed to be involved in it. And Jesse Ibarra was
3 supposed to be involved in it. He was a big guy,
4 because Looney was big. So he was supposed to be
5 involved in it. And Jeremiah Baca. It was put on
6 them to do it. But after discussion, Jeremiah Baca
7 never got approached. They never told him nothing,
8 and only Ray Molina and Jesse Ibarra were
9 approached.

10 Q. If you were part of the discussions, do
11 you know why Jeremiah Baca was not approached?

12 A. There was a few incidents that he had in
13 the past where he showed weakness. He was at the
14 North facility in Santa Fe. A Los Carnales
15 inmate --

16 MR. COOPER: Objection, relevance.

17 THE COURT: Overruled.

18 BY MR. CASTELLANO:

19 Q. Go ahead.

20 A. A Los Carnales member pulled his vent off
21 and crawled through the ventilation and took his --
22 Jeremiah Baca's vent off. And he got stuck in the
23 vent. His body was halfway hanging out into
24 Jeremiah Baca's cell. And at that time, we were at
25 a full war with Los Carnales. And he has the metal

1 vent, and this is a heavy piece of iron, and he
2 could have bashed his head in. He could have killed
3 him and literally got away with it, because the guy
4 was entering his room and his life was in danger.
5 But he just was screaming for the guards, kicking
6 the door, and told them someone is crawling through
7 his vent and get him out of there. And that just
8 showed weakness.

9 So when this incident came up in 2001, it
10 was discussed about that, and he didn't even do
11 that.

12 Q. So what was the rule, then? If SNM was at
13 war with LC, what was supposed to be done if the two
14 were in the same place at the same time?

15 A. Death, kill.

16 Q. Okay. So Ray Molina and Jesse Ibarra are
17 picked. Do you know why there were multiple people
18 picked instead of just one person?

19 A. Anytime there is an SNM hit, a killing,
20 there's always at least four or five people
21 involved. There will be at least three people, you
22 know, that are almost hands-on, or usually two to
23 three people hands-on. And there will be two -- one
24 or two persons, like, keeping look, lookout. And it
25 just depends on the situation and who the person is

1 that they're moving on. It fluctuates. But it
2 takes a few people.

3 Q. So the Sunday night, then, the night
4 before the murder, did anything else happen of
5 significance related to Mr. Looney?

6 A. There was an incident where Looney went to
7 the gym and got a package of heroin and brought it
8 back. There was papers for several of us; not
9 everyone. But papers of heroin. And that's a shot.
10 And somewhere in the process, a paper came up
11 missing of another inmate in there, and there was a
12 little argument, a little disagreement. And there
13 was tension in the pod amongst Looney and someone
14 else.

15 Q. Now, when you used the term "paper," what
16 does that mean in terms of the drug trade in prison?

17 A. Yes, they call it a paper. It's a
18 twenty-dollar shot of heroin, but a prison paper is
19 probably like a three-dollar shot on the streets,
20 but they call it papers.

21 Q. You've given us two names. At some point
22 in time, does Christopher Chavez come into the
23 picture?

24 A. When we were up on the top tier, talking,
25 and approached -- we were going to approach Ray

1 Molina first to tell him, and Critter -- we all live
2 on the same tier. Critter --

3 Q. For starters, who is "we"?

4 A. There was Willie Amador, Chris Chavez, me,
5 Jeremiah Baca, Ray Molina, and Patterson. But
6 Patterson was not discussed, or he had, like -- at
7 that point, there was no involvement. He was real
8 quiet.

9 Q. So at the beginning, Patterson's name
10 doesn't come up?

11 A. Yeah, never. This guy is quiet, minds his
12 own business, reads books, works out, sticks to
13 himself.

14 Q. Okay. Let's go back to how Christopher
15 Chavez comes into the picture.

16 A. He hears us because we're all friends. Me
17 and Critter, Chris Chavez, we got close to each
18 other because we like art and we draw and we tattoo
19 and paint and stuff, so we kind of became friends.
20 So we were talking casually right there on the top
21 tier. And it was nothing secret. It was nothing
22 secret in the pod that Looney was potentially going
23 to get killed one of these days. So he walked up
24 and just heard, and he said, "Hey, I got it. I got
25 that. There's going to be people to help."

1 But he wanted to be the one to choke him
2 out and take his life.

3 Q. Now, were you aware of any tension between
4 Christopher Chavez and Mr. Garza from before?

5 A. Yes, there was tension. Because back in
6 the day, or a period before that, Looney supposedly
7 took some shoes. The same way I got shoes stole
8 from me, they stole shoes from him in the county
9 jail, and checked him in, PC'd him, took his shoes.

10 Q. Just so I have the players correct: So
11 Looney bulldogged Christopher Chavez for his shoes?

12 A. Yes. And there was tension. After that,
13 Chris Chavez went through a few other prisons, asked
14 for protective custody, because Looney was around,
15 and made an enemy list, and so on.

16 Q. And was there ever a dispute between
17 Christopher Chavez and Mr. Garza regarding drugs?

18 A. Yes. That night, March 25, after the gym,
19 they came back from the gym. We all walked in
20 Critter's room. Chris Chavez -- me, Chris Chavez,
21 Rolando Garza. There was another guy there that
22 wasn't SNM, Joseph Otero. And Ray Molina. And
23 we -- we called Patterson there because there was a
24 paper in there for him, but Patterson didn't use
25 drugs. And there was a dispute about -- because

1 each paper had a name on it, or initial, and that
2 was for each person we knew. So Chris Chavez'
3 wasn't in there, and Rolando Garza had done it
4 before, took his paper out.

5 So Patterson walks in, and told him, "I
6 don't even do that shit." I'm sorry. "I don't even
7 do that stuff." And he gave it to Chris and kind of
8 settled the argument down, and everyone did their
9 shot of heroin, and kind of went their own way. But
10 when something like that happens, it's not over.
11 It's just building; there's tension.

12 Q. So about how close to, I'll call it
13 bedtime, did this happen with the drugs?

14 A. About two hours before bedtime.

15 Q. Okay. So at that point in time, did
16 anything else happen after you guys used the drugs?

17 A. Just plotted to kill Looney, how it was
18 going to go down.

19 Q. And how did you plot it?

20 A. Just -- we were up on the top tier, me,
21 Willie Amador, Chris. And we approached Boxer, Ray
22 Molina, and told him, "Hey, you're going to help."

23 He was like a new recruit and he had never
24 done nothing. So we were going to send him on a
25 mission, and decided to use Jesse Ibarra because he

1 was big. Looney was healthy. He used to work out
2 and stuff, and Jesse Ibarra had been in SNM for 30
3 years and never stabbed no one or nothing. So it
4 was going to be his time to earn his bones.

5 Q. So can you explain that to the members of
6 the jury? He's been in the gang for a long time,
7 but you said he hadn't earned his bones. What does
8 that tell you about him in terms of the gang?

9 A. Yeah. He just basically, he got into the
10 SNM for protection. He had money and drugs, and he
11 just basically got extorted and had protection all
12 his life in prison. So he never had to put in work,
13 because if he put in work and ended up in lockup,
14 that would stop the flow of drugs or money or
15 whatever goes on in the facility.

16 Q. And so as a result of having this
17 reputation of having not put in work for the gang,
18 is that specifically why he was chosen?

19 A. Yes. At that point there was a lot of
20 youngsters, younger people that had animosity that
21 they were getting called on to do stuff and they're,
22 like, this guy has been down all this time. What
23 about him?

24 So he was approached, and we told him,
25 "Hey, your number is up. You know, this is going to

1 go down."

2 He showed no hesitation. He just said,
3 "All right." Boxer, Ray Molina, kind of started
4 staggering, and, "Ah, ah, ah." So immediately
5 just -- we're not going to sit there and argue,
6 just, "All right. No. You're good." But that
7 means there will probably be a hit on him, too, if
8 he hesitates. But at that point, we didn't want to
9 cause a big old problem. We said, "All right. Just
10 stay up here and keep watch," whatever.

11 Q. So eventually, after you finish discussing
12 how this was going to happen, did everyone go to
13 bed?

14 A. Yes, everyone went to their own rooms.
15 They were single-cell rooms. We all have their own
16 rooms, and everyone went to their rooms.

17 Q. And did you stay in your room until the
18 morning?

19 A. Yes.

20 Q. What happened in the morning?

21 A. In the morning -- well, Jesse Ibarra was
22 on this assignment, tasked with this, and he was
23 supposed to be there early in the morning. The
24 doors open up, and about 4:00 in the morning he
25 started flipping his light switch off and on,

1 banging the door, and caught the CO's attention, and
2 said that he had to -- had a work duty in the
3 kitchen.

4 And he never worked in the morning. He
5 would work, like, on the swing shift in the night.
6 And eventually, he convinced the guard to let him
7 out, open the door. And he went to the kitchen, and
8 at that point no one wanted to say nothing.
9 Everyone got up and heard him kicking the door. But
10 he got up.

11 Q. Since he'd been tasked with this murder
12 and he's checking out to go to work at 4:00 in the
13 morning, what's going through your mind?

14 A. You right away know that he's trying to
15 get out of it.

16 Q. And did he, in fact, leave the pod around
17 that time?

18 A. Yes, he did.

19 Q. At that time, were the doors still locked
20 for everybody else?

21 A. Yes.

22 Q. If you remember, about what time did the
23 doors open?

24 A. They opened around 6:00.

25 Q. What was the plan at that time once the

1 doors opened?

2 A. Just to check it out and see how it was
3 going to go down, to see if he was up. At that
4 point, it was on.

5 Q. When you said to check "to see if he is
6 up," who are you referring to?

7 A. Rolando Garza.

8 Q. All right. After checking on him, what
9 was supposed to happen?

10 A. Just go in there and take him out.

11 Q. Who was supposed to take him out since
12 Jesse Ibarra had left the pod?

13 A. At that point, before the doors open, no
14 one knew nothing. And once the doors opened, it was
15 just kind of -- there was just a few guys left. And
16 it was -- just looking around, just confusion, but
17 it had to get done. It didn't have to get done, but
18 it was ordered, and if you didn't do it, it was
19 probably your life.

20 Q. Let me ask you a question here. Knowing
21 that this murder was going to go down, could you
22 have avoided getting involved any further?

23 A. I was trying my best to steer away from it
24 and not volunteer or put in any effort into it. I
25 felt that I couldn't go to a CO, to a correctional

1 officer, to a sergeant. I couldn't tell them, "Hey,
2 something is going to go on," because it was so
3 crooked.

4 Q. Why did you think that, when you say it
5 was crooked?

6 A. It was so corrupt, as far as the COs
7 bringing in drugs, heroin. You couldn't go up and
8 tell them, trust them, that -- they would probably
9 end up going and telling one of your partners, and
10 it would just backfire. So you couldn't do that.
11 You just had to go do it. It was just -- that's the
12 way it was.

13 Q. What about checking it in the way others
14 did? Could you have spit on a guard or thrown ice
15 on a guard or anything like that?

16 A. At that point, the doors are open, no
17 guards were in there. It was going to go down right
18 then and there. There was no way. It was just --

19 Q. Did you feel the pressure?

20 A. I felt pressure, but I still thought I was
21 getting out of it. I had surgery, surgery on my
22 penis. And I was bleeding, and I couldn't move
23 around. So I was trying to use that -- it was hard
24 for me to move around. And I told them, hey, I was
25 excessively bleeding, and I didn't want to go in the

1 room and leave any DNA, blood. I didn't want to be
2 involved, period. But I know it was being put onto
3 us, so I was trying to avoid it -- trying to -- and
4 ended up -- Willie told me, "Just be -- just look
5 out. Be right there. Just look out. Make sure.
6 These guys got it."

7 Critter said, "I got it. Don't even trip.
8 I'm going to take him out. That's mine." Just for
9 all the stuff that Rolando Garza had done to him,
10 checking him in or whatever.

11 Q. Let me stop you there. I know it's
12 embarrassing to talk about it, but you said you had
13 surgery on your penis. What was that related to?

14 A. I had two piercings, and they were
15 underneath my skin. They call them pearls. And I
16 had them on for a few years, and everything was
17 good. And it just started hurting one day, like
18 maybe a week and a half before the incident.

19 Q. Let me ask you this: Did the piercing get
20 infected?

21 A. Yes.

22 Q. And as a result of that, did you have to
23 have a procedure done?

24 A. Yes.

25 Q. Okay. Now going back to this conversation

1 with Willie and Critter, what is Critter's name?

2 A. Chris Chavez.

3 Q. Did that conversation happen that morning,
4 or did it happen the night before?

5 A. That night beforehand. The morning it was
6 just -- there was really no conversation. It was
7 more or less that night before, about I was talking
8 about my surgery, and it was going to be hard for
9 me, and that I was going home. And that was brought
10 up. All of us -- all of us were saying that. We're
11 all going home. We're all going home. Chris Chavez
12 was about to go home. He was pending another
13 charge, but he was going home. Allen Patterson was
14 going home. I was going home. Willie Amador was
15 going home. Everyone in that pod was going home
16 within months, no less than a year. And everyone
17 was kind of like -- it was just -- yeah.

18 Q. Let me show you what's been admitted as
19 Government's Exhibit 12. Do you recognize what's in
20 Government's Exhibit 12?

21 A. Yes, I do.

22 Q. What's that?

23 A. That's crime scene tape, and the door of
24 Rolando Garza's room.

25 Q. And for purposes of the record, is the

1 door on the right side of the exit sign?

2 A. Yes, that door that has red tape on it,
3 that's the door that's circled.

4 Q. Whose door is that?

5 A. Rolando Garza.

6 Q. And the next door over to the left of the
7 exit sign in this exhibit is whose door?

8 A. Joseph Otero.

9 Q. Do you recall whether he was SNM or not?

10 A. No, he was not SNM.

11 Q. Did he get along well enough with the SNM
12 Gang members that he could live in that pod?

13 A. Yes.

14 Q. And where was your cell or your house in
15 relation to where this door is?

16 A. My cell is up the stairwell on the top
17 tier, all the way to the very corner. The pod is in
18 an L, and it was next to the showers.

19 Q. I'm going to draw an arrow up the
20 stairwell. Were you up those stairs?

21 A. Up them stairs, all the way, and all the
22 way to the right, and -- yeah.

23 Q. Okay. So the door's open, and is this
24 going to take place in Looney's cell?

25 A. Yes. It wasn't planned in -- I don't know

1 how. It was just going to go down, but it was going
2 to go down in the cell. It wasn't going to go down
3 in the middle of the day room.

4 Q. What do you remember, then, about how this
5 murder went down?

6 A. It just went down.

7 Q. Let me ask you this, then. Where were you
8 supposed to be serving as a lookout?

9 A. I was going to be right there at the door.
10 And if anything got too out of control, I was going
11 to help. The rooms are very small. So the walk
12 space in the room is, you know, barely big enough
13 for one person, much less four people, three people
14 going in on one person. So it was very small. And
15 it was -- if I was going to be at the door and make
16 sure nothing happened and --

17 Q. Let me ask you this. What were you told
18 about being a lookout, and then, if things changed,
19 what were you supposed to do?

20 A. If things were getting bad, to go in there
21 and help.

22 Q. Who told you that?

23 A. Willie Amador.

24 Q. So does anyone eventually enter that cell?

25 A. Yes.

1 Q. Who enters?

2 A. Allen Patterson walked in, and Chris
3 Chavez walked in, and I eventually walked in, a
4 little later, afterward.

5 Q. Now, you mentioned earlier that Allen
6 Patterson was not involved with the discussions.

7 A. Never.

8 Q. Did you know how Allen Patterson found
9 himself at that door?

10 A. I did not know who told him, who
11 approached him and who asked him. I didn't even
12 know he was SNM. I just knew he knew a few guys
13 from his hometown that happened to be SNM and he
14 hung around them. But I don't know exactly what
15 happened there. But that's -- when it went down,
16 that's how it went down.

17 Q. And you said you didn't know he was SNM.
18 Did you ever hear anyone call him carnal?

19 A. Yeah, I've heard a few people call him
20 carnal. But when everyone is happy, you know,
21 drugs, and just having a grand old time in there,
22 they call each other carnals.

23 Q. And do you also use the term or the word
24 Trigger? Did you know Mr. Patterson by that name as
25 well?

1 A. Trigger, yes.

2 Q. And from the conversations and from living
3 in the cell, did he know that you guys were SNM?

4 A. Yes.

5 Q. Okay. So let's take it from the
6 beginning, when people actually begin entering the
7 cell. What do you see?

8 A. Rolando Garza was standing at his sink,
9 brushing his teeth, leaning over the sink brushing
10 his teeth. And Trigger, Allen Patterson, walks in.
11 Critter walks in, Chris Chavez walks in. And
12 Rolando Garza kind of looks up, brushing his teeth,
13 kind of looks to the side, and then looks down. You
14 kind of see a face of like -- no one ever went into
15 his room. So 6:00 in the morning, for two guys to
16 walk in the room, that was kind of suspicious. But
17 that's how it went down, and just went down. Allen
18 Patterson grabbed him, you know, bear-locked and
19 threw him down to the ground.

20 Q. Allen Patterson grabbed who?

21 A. Rolando Garza.

22 Q. And what happened after he threw him down?

23 A. Threw him down on the floor, and Chris
24 Chavez wrapped a laundry bag around his neck.

25 Q. And was there a struggle?

1 A. There was a struggle. He got down and he
2 was flat down on his stomach, all the way down.

3 Q. Is that Mr. Garza was on his stomach?

4 A. On his stomach. Patterson was laying on
5 top of him. Chris Chavez was, like, in front of him
6 with the bag. And then he stood all the way up.

7 Q. Who stood up?

8 A. Rolando Garza just got, like, a second
9 wind and stood up. And as he stood up, he stood up
10 with Allen on his back. Allen kind of, like, slid
11 back down and regripped, grabbed him by the waist,
12 and then swung him down a second time, and he fell,
13 like, onto the bed.

14 Q. And did Allen Patterson continue holding
15 Mr. Garza?

16 A. For a short period of time he held him,
17 got him in place. And he told Chris, "Get the F out
18 of the way." And he, like, just maneuvered up, and
19 Chris came in, like, jumped on his back. And there
20 was, like -- I ended up going in there, pushed down
21 on his legs. And Allen Patterson got him and choked
22 him out.

23 Q. Now, did this door stay open or closed the
24 whole time? What happened with the door?

25 A. It's flung open. Well, at first, I got

1 up, brushed my teeth, grabbed my books. I was ready
2 for school. And I was just going to be a lookout.
3 I set them down by the front pod door, and I walked
4 back by Rolando's door. I started going down. And
5 the front pod door is just right here in the front.
6 You can't see it. I looked out the pod front door,
7 make sure no one was coming. And I heard -- like, I
8 heard someone scream, "Close the door."

9 And I ran up to the door, and I closed it.
10 And that's when Rolando was getting back up. And
11 they got -- went to the bed. And I ran in, and I
12 just ran -- I don't know. I just went in.

13 Q. All right. Now, why did you go in?

14 A. Because they told me to be there and look
15 out, and if something happened, to go in there.

16 Q. And did you help out because there was a
17 struggle going on in there?

18 A. There was somewhat of a struggle.
19 Honestly, I don't think -- the second time he went
20 down, and when they got control, Allen grabbed him
21 by his neck; I don't think I had to go in there, but
22 it was -- there was so much going through my head,
23 and they told me -- I was, like, asked to
24 participate in it. And I knew if I didn't
25 participate in any sort of a way, that I was

1 possibly -- could end up with a rope around my neck.

2 Q. So how did you -- I guess, by grabbing his
3 legs, is it fair to say that you helped them kill
4 Looney?

5 A. Yes.

6 Q. And why is it that you grabbed his legs?

7 A. Just out of fear, out of seeing them
8 struggle. There was so much confusion. Still to
9 this day I just -- I don't know why I went in there.
10 I don't know why. I don't know why.

11 Q. When you grabbed Looney's legs, did that
12 make it more difficult for him to struggle and fight
13 these two guys off?

14 A. No, not really. He was -- he was pinned
15 down.

16 Q. Okay. So how long after you held his legs
17 did he quit moving?

18 A. It was fast, within maybe 15 seconds, 10
19 seconds. It was fast. When you -- when you hold
20 your breath and you do that, you could do -- you
21 pass out pretty fast. So he passed out, and then
22 they just stayed on it for a while.

23 Q. Is this accurate? I think you said
24 initially Allen Patterson threw down Mr. Garza, but
25 at some point did he change positions with

1 Mr. Chavez, and was he the one who eventually choked
2 Mr. Garza to death?

3 A. Yes.

4 Q. And what happened after Mr. Garza quit
5 moving?

6 A. Just walked out of the room. I grabbed my
7 books, all my school -- my stuff for my GED and
8 school, and I took off.

9 Q. Where did you go?

10 A. I headed towards the educational building.

11 Q. And did you -- were you scheduled for
12 classes over there?

13 A. Yes.

14 Q. What time were classes supposed to start?

15 A. They start about 7:30, 8:00.

16 Q. And at some point is chow also served in
17 the morning?

18 A. Yes.

19 Q. Do you remember when you ate?

20 A. I don't remember the exact time when I
21 ate, but it was in the morning.

22 Q. And if you remember -- I know it's been a
23 while -- do you remember if you ate before or after
24 going to class?

25 A. It was before class.

1 Q. And do you recall whether Christopher
2 Chavez ate breakfast with you that morning?

3 A. Yes, fried eggs.

4 Q. I'm going to show you Government's Exhibit
5 105, and I'm going to ask you if you recognize this
6 exhibit, Mr. Martinez.

7 A. Yes, I do.

8 Q. What is that exhibit?

9 A. That's my plea agreement.

10 Q. Do you see that you pled guilty May 5th,
11 2017, almost a year ago?

12 A. Yes, I did.

13 Q. Okay. I'm going to turn to the next --
14 the next page of that exhibit, page 2. I'll ask you
15 if you pled guilty to Count 2, which was violent
16 crimes in aid of racketeering to murder.

17 A. Yes, I did.

18 Q. And was that the murder of Rolando Garza?

19 A. Yes.

20 Q. When you pled guilty, did you understand
21 that the penalty for that crime was life without the
22 possibility of parole?

23 A. Yes.

24 Q. Okay. Turning to the next page, do you
25 see what's called admission of facts? I'm going to

1 circle it on the plea agreement. And do you see a
2 portion here that's blotted out or redacted?

3 A. Yes, I do.

4 Q. Now, for purposes of your plea agreement,
5 did you state in the plea agreement what you did to
6 show why you were guilty?

7 A. Yes.

8 Q. For purposes of trial, are you here to
9 tell the jury in your own words, rather than have
10 them rely on a piece of paper?

11 A. Yes.

12 Q. Okay. Turning to page 5 of your plea
13 agreement, I want to ask you about a special
14 provision. I'm going to circle on here, page 5,
15 paragraph C. I'm going to ask you if you agreed to
16 cooperate with the Government in this case.

17 A. Yes, I did.

18 Q. Now, in your case, do you understand if
19 you cooperate and the Government files a motion on
20 your behalf, called a 5K -- I'm underlining that on
21 your plea agreement -- 5K and 3553(e), if we filed
22 that motion, that the judge can sentence you to
23 something less than life?

24 A. Yes, I do.

25 Q. Now, in your case, with this additional

1 provision, you understand that if we file this
2 motion, that you can get no more than 20 years'
3 imprisonment for your cooperation?

4 A. Yes.

5 Q. And if the judge accepts that, you could
6 go from 20 years and below 20 years?

7 A. Yes.

8 Q. I'm going to turn next to Government's
9 Exhibit 106. Do you recognize this document?

10 A. Yes.

11 Q. And is this what's called an addendum to
12 your plea agreement, which is the document we just
13 looked at?

14 A. Yes.

15 Q. And what is your understanding of what
16 this agreement means that I'm showing you right
17 here?

18 A. My understanding is to cooperate;
19 cooperate fully and honestly, and do everything,
20 speak the truth about everything.

21 Q. Next to your name on this document, there
22 is an a/k/a, then the words "Little Huero."

23 A. Yes.

24 Q. Who is that?

25 A. That's me.

1 Q. Is that the nickname that you used?

2 A. Yes.

3 Q. Let me turn to the next page of that
4 document. I'm showing you paragraph 6 on page 2 of
5 the addendum. And do you see similar language here
6 as in your plea agreement that that refers to 5K1.1
7 and 3553(e), the section?

8 A. Yes, I do.

9 Q. And is it your understanding that, as I
10 explained a second ago, or as we discussed, that
11 your sentence remains at life unless there is a
12 motion filed on your behalf?

13 A. Yes.

14 Q. And then is it up to the judge to accept
15 or reject your plea agreement?

16 A. Yes, it is.

17 Q. And ultimately, regardless of what our
18 recommendation is, you understand that if we file
19 the motion, that the judge has the sole discretion
20 about what your sentence should be?

21 A. Yes.

22 Q. Now, I'm going to ask you if, in this
23 case, you submitted to what's called a competency
24 evaluation.

25 A. Yes.

1 Q. And ultimately, did this judge find you
2 competent to proceed to trial?

3 A. Yes, he did.

4 Q. And after he made that finding, did you
5 decide to plead guilty in this case and then
6 cooperate?

7 A. Yes, I did.

8 Q. Now, related to this competency
9 evaluation, can you tell the members of the jury
10 whether -- in state court in 2014, whether you had
11 previously been found not competent?

12 A. Yes. In 2014, I had a trafficking charge
13 and a burglary charge, and I was -- they sent me for
14 a mental health evaluation by several doctors
15 because I've been -- I had little problems here and
16 there. And they were finding me incompetent in the
17 state, and my charges were dismissed.

18 So when I got arrested, like, a year and a
19 half later on this, and then it showed that I did an
20 incompetency test, so they immediately wanted to
21 make sure whether I was incompetent or competent to
22 stand trial.

23 Q. Let me stop you there, just to make sure I
24 was hearing the words correctly, and the jury was.
25 In state court, were you found not competent?

1 A. I was found not competent to stand trial.

2 Q. And then when you got arrested in this
3 case, was that in December of 2015?

4 A. Yes.

5 Q. And as a result of having been found not
6 competent before, did you then get sent away for an
7 evaluation in this case?

8 A. I did.

9 Q. Now, during that evaluation, where did you
10 go?

11 A. I went to California.

12 Q. And was there a place called a
13 Metropolitan Detention Center in California?

14 A. Yes, BOP, Metropolitan Center.

15 Q. How long were you there being evaluated?

16 A. I was there about two months.

17 Q. When you were there, did they perform any
18 kind of tests?

19 A. They performed several tests throughout
20 the two months.

21 Q. What kind of tests, as best as you can
22 remember?

23 A. It was a reading test, just different
24 questions, blocks, pictures, listening devices.
25 They would study -- they would watch you all day.

1 They would have a camera on you 24/7.

2 Q. And did you eventually find out also that
3 they listened to your phone calls while you were
4 there?

5 A. Yes.

6 Q. When you were there, did you give your
7 best effort when you took the tests?

8 A. I didn't.

9 Q. And when you took those tests, were there
10 times when you tried to skew the result of the test?

11 A. There was times where I shut down, I
12 was -- and I exaggerated or I just answered just
13 whatever.

14 Q. And were there times when you
15 purposefully --

16 MR. GRANBERG: Objection, Your Honor,
17 leading.

18 THE COURT: Don't lead.

19 BY MR. CASTELLANO:

20 Q. Tell us whether you gave your best effort
21 on all those tests.

22 A. I didn't on some of them. On some of
23 them, I did.

24 Q. And tell the jury whether there were times
25 when you didn't answer questions accurately on

1 purpose.

2 A. Yes, there was times where I just didn't
3 answer them.

4 Q. And why were you doing that?

5 A. There was times I felt intimidated by the
6 doctors, and there was -- I heard that if I had been
7 found incompetent, that I would go to a hospital
8 setting and not to go to prison. And I figured
9 maybe going to a hospital better than a prison --
10 would be better.

11 Q. So were you then trying to avoid going to
12 prison and maybe go somewhere else?

13 A. Yes.

14 Q. And did you know what you were doing when
15 you were doing that?

16 A. Yes.

17 Q. And then was it after the point you were
18 found competent in this case that you decided to
19 plead guilty and begin cooperating?

20 A. Yes.

21 Q. Going back to even when you were a
22 teenager, did you ever go to a place called Sequoia?

23 A. Yes, I was there long-term.

24 Q. What was the purpose of going to Sequoia
25 as a teenager?

1 A. My dad and brother got shot, and I was in
2 the backseat and I witnessed it. And I went in
3 shock. I couldn't eat, sleep. They took me from my
4 family, CYDF (sic). They put me in the juvenile
5 system. And I just had, like, a nervous breakdown.
6 I was 11 years old, witnessing my dad and brother
7 get thrown there on the floor dead. And the guy
8 almost shot me, too. The gun jammed. And I was
9 just in shock. And I went to Sequoia for a long
10 term.

11 Q. And since that time, or even maybe before
12 that time, how did you do in school?

13 A. I was in special ed from probably first
14 grade all the way up. I had behavior problems, and
15 I -- there was so many problems at home that when I
16 would be at school, my mind wasn't even in school.
17 I was just trying to -- I was not in school. I was
18 in school, but my mind wasn't there. So I had a lot
19 of problems.

20 THE COURT: Mr. Castellano, would this be
21 a good time for us to take our afternoon break?

22 MR. CASTELLANO: Yes, Your Honor.

23 THE COURT: All right. We'll be in recess
24 for about 15 minutes. All rise.

25 (The jury left the courtroom.)

1 THE COURT: As far as the motion that
2 Mr. Benjamin filed, 2151, I've had a chance to
3 review that. I'm going to deny that motion. I
4 think it's essentially a motion for a mistrial and a
5 severance, and I'm going to deny that motion.

6 On the two tapes that Mr. Davidson filed
7 his motion on, are y'all going to admit those?

8 MR. BLACKBURN: No, they have not been
9 admitted.

10 MS. ARMIJO: No, no, no.

11 THE COURT: I know they haven't been
12 admitted, but are y'all going to attempt to admit
13 them?

14 MS. ARMIJO: No.

15 THE COURT: You're not? So that's moot,
16 that issue?

17 MS. ARMIJO: Right.

18 MR. BECK: Sounds like it, yes.

19 THE COURT: That motion is granted.

20 MR. BENJAMIN: May I have 30 seconds, Your
21 Honor, just to add something to that?

22 THE COURT: No, let's take our break.

23 (The Court stood in recess.)

24 THE COURT: All right. I think all the
25 defendants are back in, and we've got an attorney

1 for each person.

2 Mr. Benjamin, if you want to go ahead and
3 address the Court. Mr. Benjamin.

4 MR. BENJAMIN: Your Honor, and this is
5 just -- and I apologize. I don't know the motion
6 that I filed last night, but it was 2151. But it
7 was a motion for continuance/adjournment. I just
8 had an Exhibit A, Your Honor. I'm going through the
9 documents that were produced. I haven't managed to
10 make my way through the documents that were
11 produced. But there is a note out of the case
12 agent -- and I reference this in my motion, that I
13 didn't know what was in there -- but on 11/29 of
14 2012, the note reads -- and I was just going to move
15 to have it admitted and attached to that interview
16 with Sleepy, who is a witness the Court will hear
17 about, "never said they did it," which I would
18 consider Brady or something that should have been
19 disclosed. And as part of my reason for the
20 requesting the continuance or adjournment, I don't
21 know what's in those documents that has been
22 disclosed.

23 May I approach? I showed this to Ms.
24 Armijo, but I was going to move to admit this, Your
25 Honor.

1 THE COURT: Okay. I'll figure out what to
2 do with it. I'll take a look at it.

3 Okay. All rise.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be
6 seated.

7 All right. Mr. Martinez, I'll remind you
8 that you're still under oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Castellano, if you wish to
11 continue your direct examination of Mr. Martinez,
12 you may do so at this time.

13 MR. CASTELLANO: Thank you, Your Honor.
14 May I have a moment to look at these exhibits with
15 counsel?

16 THE COURT: You may.

17 MR. CASTELLANO: Thank you, Your Honor.

18 THE COURT: Mr. Castellano.

19 BY MR. CASTELLANO:

20 Q. Okay. Mr. Martinez, do you recall that
21 you pled guilty in May of last year?

22 A. Yes.

23 Q. And also, by that time, do you recall
24 debriefing with the Government?

25 A. Yes, I did.

1 Q. And did the FBI sign you up as a
2 confidential human source?

3 A. Yes.

4 Q. And when you provided the information to
5 the Government, are you aware that you have been
6 provided approximately \$970 from the FBI?

7 A. I did, just a little here, a little there.

8 Q. And do you recall at various times you've
9 been provided \$300 for basically a few months at one
10 time?

11 A. Yes. And I'm no longer getting it no
12 more.

13 Q. Now, you also told us or told the jury
14 that when you were younger, and even in prison, that
15 you had used drugs; is that correct?

16 A. Yes, I did.

17 Q. When is the last time you used drugs?

18 A. The last time I used drugs was in Sandoval
19 County. That was about eight months ago.

20 Q. What did you use?

21 A. Suboxone.

22 Q. While you've been pending charges in this
23 case, have you also used marijuana?

24 A. I used marijuana one time.

25 Q. In which facility?

1 A. Cibola County, New Mexico.

2 Q. And were you aware that you were not
3 supposed to be using drugs?

4 A. Yeah. There's no drugs in no facility.

5 Q. Right. The rules don't provide for drugs
6 unless you have a prescription. But it seems like
7 almost every facility, drugs come in; is that fair?

8 A. Yes.

9 Q. So on those occasions when drugs came your
10 way, did you use those drugs?

11 A. Yeah. It was for my birthday. I used it
12 as a special occasion, but I wasn't out chasing it.

13 Q. Let me show you Government's Exhibit 591.
14 If I can -- oops, maybe I can't. I'll start with
15 the visualizer. I can come back to that.

16 Okay. Going back to when you were in O-2,
17 rather than O-1 housing units --

18 A. Yes.

19 Q. -- do you remember somebody named Chris
20 Garcia was living in that pod?

21 A. Yes.

22 Q. And who is Chris Garcia?

23 A. He's a friend of mine. He's an SNM
24 member. He's just there, yeah.

25 Q. Was he somebody who almost always had

1 access to drugs in the facility?

2 A. Yes.

3 Q. And in that pod, do you remember Joe and
4 Frankie Gallegos living there also?

5 A. Yes, for a small period of time.

6 Q. And while they were there, did they have
7 drug connections?

8 A. Yeah, they had drugs. We all partied.

9 THE COURT: Mr. Castellano, Ms. Bevel is
10 back here.

11 MR. CASTELLANO: Thank you, Your Honor.
12 If I could have the visualizer for a moment. Thank
13 you.

14 BY MR. CASTELLANO:

15 Q. Mr. Martinez, I'm going to show you
16 Government's Exhibit 591. It's already been
17 admitted, but for purposes of your testimony so far
18 I've removed some names from this exhibit. If
19 you're able to see this exhibit, I want to ask you
20 if you recognize people in Government's Exhibit 591.

21 A. I recognize all of them.

22 Q. I'm going to start on the back row, left.
23 I'll make a mark on each person. And I've marked
24 the first person. Do you know who that is?

25 A. That's Paul Jaramillo, a/k/a Criminal,

1 18th Street.

2 Q. So you know him as Criminal?

3 A. Yes.

4 Q. I'm going to put a number 2 on the next
5 person.

6 A. That's Jeremiah Baca. They call him Elon
7 or Looney. He's the one that failed to kill that
8 LC, and he was kind of the one that was supposed to
9 go on the mission.

10 Q. I know you're turning away from the
11 microphone. If you can turn the microphone closer
12 to you when you look at the picture, I want to make
13 sure everybody can hear you. Or turn around for
14 your responses. And you said number 2 is Jeremiah
15 Baca?

16 A. Yes.

17 Q. Was he the person that you didn't trust to
18 do the mission?

19 A. Yes.

20 Q. I'm marking the third person from the left
21 on that exhibit. Do you know who that is?

22 A. That's Robert Sanchez, a/k/a Tiny from
23 Belen.

24 Q. The fourth person?

25 A. Mandel Parker, Baby Chuco. He's from

1 Socorro.

2 Q. The fifth person?

3 A. That's Frank Castillo. They call him
4 Pancho. He's from San Jose, Albuquerque.

5 Q. And then are you aware of whether or not
6 he was also killed on the same day as Looney?

7 A. Yes. Looney is right underneath him.

8 Q. Let me move first to the person next to
9 Mr. Castillo. Who is the sixth person?

10 A. That's Angel DeLeon. He's from Mexico.

11 Q. The seventh person?

12 A. That's Joe Gallegos, Belen.

13 Q. And you say he's from Belen?

14 A. Yes.

15 Q. The eighth person?

16 A. That's Ruben Romero, a/k/a Boxer. I'm not
17 for sure. I think he's from south side,
18 Albuquerque.

19 Q. Did you know more than one person in the S
20 who also went by Boxer?

21 A. Oh, yeah. There's several Boxers. There
22 is several Hueros. There is several Looneys.
23 There's a number of all kind of names.

24 Q. How many Smurfs do you know?

25 A. I know a few Smurfs, about three.

1 Q. Do you know three?

2 A. Yes.

3 Q. Who were the three Smurfs that you know?

4 A. I know Smurf from Vegas, Leroy Lucero. I
5 know Smurf from Espanola, Daniel Archuleta. And I
6 know another one, but it has nothing to do with
7 prison; just from the neighborhood.

8 Q. Okay. Going back to Exhibit 591, I put a
9 number 9 on the person in the far right in the back.
10 Do you recognize that person?

11 A. David Calbert, a/k/a Spider. He's from
12 Tucumcari.

13 Q. I'm going to start now on the front row.
14 I'm going to put a number 1 starting on the left
15 side. Who is that?

16 A. That's Eugene Martinez, Little Huero, me.

17 Q. Number 2?

18 A. Rolando Garza, a/k/a Looney. He's from
19 Pajarito, Albuquerque.

20 Q. Number 3?

21 A. Chris Chavez, a/k/A Critter, from -- I
22 don't know where he's from.

23 Q. And number 4?

24 A. That's Boxer from south side, Ray Molina.

25 Q. Now, you mentioned Ray Molina earlier as

1 someone who was supposed to be involved. What
2 happened to him?

3 A. He started showing hesitation as soon as
4 Amador and me start talking, and Chris Chavez, kind
5 of telling him that he's going to be in on it. And
6 he just started, like -- I don't remember his exact
7 words, but he was showing a lot of hesitation. And
8 just by seeing that, you just know that it possibly
9 could be a problem.

10 Q. And so did he ever follow through with the
11 order to help kill Looney?

12 A. Instead of helping to kill him, he just
13 had to stand up on the top tier and keep watch.
14 From the top tier, you could see into the top
15 control room. It's a two-story control room. So
16 him and Willie Amador stood at the top, just making
17 sure where the guard was at all times.

18 Q. Now, when you were standing watch, what
19 are you watching for?

20 A. You're watching for guards, the main
21 thing; and then you're watching for potential other
22 inmates that could be a witness, that could be a
23 liability, and possibly, if they're coming out in
24 the direction, whatever, Willie Amador, Boxer, would
25 have kind of, like, intercepted him or say, "Hey,

1 let's talk in the room," or lure him in the room to
2 do a shot of heroin or something, just to take his
3 eyes off -- they're, like, you know, they're there
4 to do that.

5 Q. I'm going to go back to Leonard Lujan and
6 ask you, without Billy Garcia's backing, was Leonard
7 Lujan anyone who had any authority?

8 A. He was nobody.

9 Q. So was it only with Billy Garcia's backing
10 that he was able to give out the orders to you and
11 maybe others?

12 A. That was the only reason why.

13 Q. When you were arrested in this case, were
14 you housed with some of the other defendants who are
15 at trial now?

16 A. Yes, I was housed with almost all of them.

17 Q. Where were you housed before you were
18 cooperating?

19 A. I was housed -- went to Otero. I ended up
20 going for my evaluation, ended up in Oklahoma;
21 California; back to -- I ended up in Estancia. That
22 was the last time I was with them.

23 Q. Before you were cooperating, I want to ask
24 you about some conversations you had with
25 Christopher Chavez, and I want to know if he made

1 any comments to you about you being charged in this
2 case.

3 A. Yes, that, what you're talking about right
4 there, happened in Otero County when we first got
5 arrested.

6 Q. What did he say to you?

7 A. "I don't understand why you're here. You
8 shouldn't even be here. You didn't do nothing. You
9 were just there. You were just the doorman. Don't
10 even trip. I got this."

11 And that was it, and I just -- I just
12 looked at him because we were in rooms across from
13 each other, we could see each other. And I would
14 step away from my door and just go like that, not to
15 be talking, because everyone is all nosy, everyone
16 is at their doors, listening, when two people are
17 talking. And sometimes we would just talk, step
18 back and talk with sign language, with our hands,
19 and then words or gestures and stuff. I just told
20 him, "I don't want to talk about it."

21 Q. For the record, I'll note that you put
22 your finger up to your lips as if asking someone to
23 hush.

24 A. Yeah, I was like that, and no talking.

25 Q. Did you have a discussion with him about

1 what the two of you might do if things started
2 getting bad for you?

3 A. That conversation was in Estancia, right
4 before I made the decision to start cooperating.

5 Q. Tell us about that conversation, please.

6 A. He approached me and told me, "Hey, I
7 don't know, things ain't looking too good."

8 And he came out with the story since
9 Joseph Otero made a statement on him. We got our
10 tablets, we seen everyone that made statements right
11 from the beginning. And there was a statement from
12 Ray Molina, there was a statement from Joseph Otero
13 against him. So he came up, he told me, "Hey, I
14 just approached Allen Patterson, Trigger, about
15 this." But he's, like, "There is no -- Trigger, you
16 even try bringing up any conversation with Trigger,
17 and he'll just walk away from you. He won't talk."

18 Q. What was the plan that Mr. Chavez had?

19 A. He just came and told me, "Let's make,
20 let's make a story. We'll throw it off on Boxer and
21 Joseph Otero, since they made a statement on me, and
22 we'll say that they're the ones that went in and
23 killed him, and that we just kept watch from the top
24 tier or from whatever."

25 MR. GRANBERG: Objection, Your Honor. May

1 we approach?

2 THE COURT: You may.

3 (The following proceedings were held at
4 the bench.)

5 MR. GRANBERG: Your Honor, I'm aware of a
6 conversation they had at Estancia. But as far as
7 going into testimony that he's going into right now,
8 I've never seen it before in any previous 302s. I
9 don't know if it was recently disclosed or not, but
10 this is like far more detailed than I've ever seen
11 before.

12 MR. CASTELLANO: It's a 302 from May 17 of
13 '17. It's referenced here in the first paragraph on
14 page 6 of 7 and it says, "Chavez told Martinez,
15 'Things look really bad for us and we can have our
16 lawyers get together and tell the Government and can
17 sign a plea together and say Boxer (Ray Molina) and
18 Joseph Otero did the hit and we were just lookouts.'
19 Chavez wanted to make the same statement in a plea
20 deal with Molina and Otero, because they had made a
21 statement against Martinez during the state
22 investigation." I think it's right on.

23 MR. GRANBERG: I heard more detail, which
24 caused my concern.

25 THE COURT: That's often the case when

1 you've got a 302, and you've got to live with it
2 here. But I think this is more just grist for
3 cross-examination.

4 MR. CASTELLANO: Thank you.

5 (The following proceedings were held in
6 open court.)

7 THE COURT: All right. Mr. Castellano.

8 BY MR. CASTELLANO:

9 Q. Mr. Martinez, I think you were saying that
10 Chris Chavez' plan was to maybe cooperate and blame
11 Mr. Molina and Mr. Otero for the murder; is that
12 correct?

13 A. Yes.

14 Q. And is this a statement you gave to law
15 enforcement in May of 2017?

16 A. Yes, I did.

17 Q. I want to ask you about a conversation or
18 at least things that Billy Garcia said while you
19 were incarcerated with him. Do you remember what he
20 said?

21 A. There was just times where he said that
22 "Everyone just stay quiet and stick to their guns
23 and then we'll be all right. They don't have
24 nothing on us." And he feels sorry for the
25 snitches.

1 Q. What did you understand that to mean?

2 A. Just, in other words, he feels sorry for
3 them; they're going to get killed, like the rest --
4 all of the other ones.

5 Q. In response to hearing that, did
6 Christopher Chavez say anything in response to what
7 Billy Garcia said?

8 A. Yes. That conversation right there
9 happened in Otero, when we were first there, and we
10 were in the yard and they came up like that. And
11 after Billy said that, Chris Chavez -- he was just
12 back and forth and he was, like, "I feel sorry for
13 the shot-callers, all the shot-callers," and then it
14 just got quiet.

15 Q. And who were the shot-callers?

16 A. There were several people. I don't know
17 who was a shot-caller at that time, but whoever was
18 calling shots on these cases -- on these charges and
19 other charges, I don't know. But Billy Garcia was
20 one of them, and whoever else was arrested.

21 Q. I want to ask you about certain actions by
22 Arturo Garcia and someone else known as Samuel
23 Silva. Do you remember things that Arturo Garcia
24 would do?

25 A. Yeah, well, there was a lot of people

1 pointing, everyone is pointing the finger at each
2 other, and there's a lot of people that didn't like
3 Arturo for reasons, I don't know what. But -- and
4 so everyone was trying to point out things, letters
5 or phone calls or they were mumbling behind his
6 back.

7 And Samuel Silva came in. And him and Art
8 are real good friends. And Samuel kind of took the
9 initiative -- he was like, he got real defenseful.
10 Me and him had a talk in the room, and he's like,
11 "Hey, why is everyone tripping with Art," and
12 pointing all this. And he said, "I'm going to get
13 the computer and I'm going to go through it and
14 point out everybody else's stuff, whoever has dirt
15 on them."

16 And dirt is like bad things that are not
17 good. So that's what he did. He got a tablet, and
18 he studied it, went through it, and pulled out all
19 kinds of stuff and just confronted him to make
20 them -- to humble themselves, because everyone was
21 trying to throw stuff on Arturo Garcia and just make
22 him look bad. So they kind of wanted to do it to
23 whoever had dirt on them, and then say, "Hey, man,
24 you're not perfect neither."

25 Q. Were there times when Arturo Garcia and

1 Samuel Silva would question other people about
2 things that came out on the tablets?

3 A. They would ask questions. Samuel Silva
4 would mainly be the one. But Arturo Garcia would be
5 there, but they would ask: "What's this? What
6 happened here? You checked it in. You PC'd. You
7 have an enemy list. You have these charges." Or
8 whatever the case was, they would, you know,
9 approach him and just question him on it.

10 Q. Let me ask you this: Was Samuel Silva
11 charged in this case, and was he supposed to have a
12 tablet?

13 A. He was not charged in the case, and he was
14 not supposed to have a tablet.

15 Q. And did he still have access to one, where
16 he could see the materials and the information from
17 this case?

18 A. Yes, several tablets.

19 Q. When you began cooperating, did you
20 request to be transferred to a different facility?

21 A. Immediately.

22 Q. Why is that?

23 A. I didn't feel comfortable. I didn't feel
24 safe. There was a lot of tension building up, and
25 I'm not dumb; I'm not going to fall for it. I'm not

1 going to fall the way a lot of these other guys fell
2 for it. I'm not going to fall for it no more.

3 Q. And what happens when you cooperate with
4 law enforcement in a gang?

5 A. I have a target on my head. That's
6 basically a death sentence. The day I signed the
7 plea, I signed a death sentence.

8 Q. I want to ask you if you recognize some of
9 the people in the courtroom today. And I'll ask you
10 if you recognize Joe Gallegos. I think you have
11 glasses today. If you need some glasses, feel free
12 to wear them.

13 A. He looks familiar. Yeah, I recognize him.

14 Q. Where do you think he is?

15 A. He's in the very back.

16 Q. And with hair, without hair? Anything on
17 his face or off his face?

18 A. He's bald, glasses.

19 MR. CASTELLANO: Let the record reflect
20 the witness has identified Joe Gallegos.

21 THE COURT: The record will so reflect.

22 BY MR. CASTELLANO:

23 Q. I'm going to ask you if you see Billy
24 Garcia in the courtroom.

25 A. He's wearing a blue shirt, glasses.

1 MR. COOPER: We would stipulate that he
2 can identify Mr. Garcia.

3 THE COURT: Does that work for you,
4 Mr. Castellano?

5 MR. CASTELLANO: Yes, sir.

6 BY MR. COOPER:

7 Q. Do you know each of these men to be SNM
8 Gang members?

9 A. Them two?

10 Q. Yes.

11 A. Yes.

12 Q. Do you recognize Edward Troup in the
13 courtroom?

14 A. Yes.

15 Q. What's he wearing?

16 A. Black shirt.

17 Q. And where is he seated?

18 A. In the back, to the right.

19 Q. When you say -- the back of the courtroom
20 or closest to me?

21 A. The back of the courtroom, the last right,
22 sitting right there, before you walk out the little
23 double door.

24 MR. CASTELLANO: Let the record reflect
25 the witness has identified Edward Troup.

1 THE COURT: The record will so reflect.

2 BY MR. CASTELLANO:

3 Q. Did you know Edward Troup to be a gang
4 member from your time in the gang?

5 A. Yes.

6 Q. Do you recognize or see Allen Patterson in
7 the courtroom?

8 A. Yes.

9 Q. Where is he and what's he wearing?

10 A. He's wearing a black jacket.

11 Q. And where is he seated?

12 MR. LAHANN: Your Honor, we'll stipulate
13 this is Mr. Patterson.

14 THE COURT: Does that work for you,
15 Mr. Castellano?

16 MR. CASTELLANO: Yes.

17 BY MR. CASTELLANO:

18 Q. Is this the Allen Patterson you say you
19 weren't sure if he was an SNM Gang member, but you
20 heard people call him "carnal"?

21 A. Yes.

22 Q. And do you see Arturo Garcia in the
23 courtroom?

24 A. Yes.

25 Q. Where is he seated?

1 MR. BLACKBURN: Your Honor, we'll
2 stipulate.

3 THE COURT: Does that work for you?

4 MR. CASTELLANO: Yes, Your Honor.

5 BY MR. CASTELLANO:

6 Q. Have you known him to be an SNM Gang
7 member?

8 A. Yes.

9 Q. Have you ever known him to be a leader in
10 the gang?

11 A. Yes.

12 Q. Do you see Christopher Chavez in the
13 courtroom?

14 A. Yes.

15 Q. And what is he wearing?

16 A. Black jacket.

17 Q. Where is he seated?

18 A. Right there in front of the bathroom door,
19 right there.

20 MR. CASTELLANO: Let the record reflect
21 the witness has identified Christopher Chavez.

22 THE COURT: The record will so reflect.

23 BY MR. CASTELLANO:

24 Q. Did you know him to be an SNM Gang member?

25 A. Yes.

1 Q. I'll ask you if you recognize Andrew
2 Gallegos.

3 A. Yes.

4 Q. Now, before this case, did you know him?

5 A. Yes, I knew him.

6 Q. And before this case, did you know whether
7 or not he was an SNM Gang member?

8 A. He was never an SNMer, as far as I knew.

9 Q. So from that time that you knew him, you
10 did not know him to be an SNM Gang member?

11 A. No.

12 MR. CASTELLANO: May I have a moment, Your
13 Honor?

14 THE COURT: You may.

15 BY MR. CASTELLANO:

16 Q. Mr. Martinez, I don't remember if I asked
17 you this question. When Leonard Lujan told you
18 about what was supposed to happen to Mr. Garza, did
19 he tell that order was coming from Billy Garcia?

20 A. Yes, he did. And you asked me that.

21 MR. CASTELLANO: Thank you. I pass the
22 witness, Your Honor.

23 THE COURT: Thank you, Mr. Castellano.

24 Mr. Cooper, do you have cross-examination
25 of Mr. Martinez?

1 MR. COOPER: I do, Your Honor.

2 THE COURT: Mr. Cooper.

3 MR. COOPER: May it please the Court.

4 THE COURT: Mr. Cooper.

5 MR. COOPER: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. COOPER:

8 Good afternoon, Mr. Martinez.

9 A. Good afternoon.

10 Q. Sir, you were indicted in this very same
11 case back in December of 2015, weren't you?

12 A. Yes.

13 Q. And you were arrested on December 3, 2015,
14 I don't know, probably 5:00 in the morning, 6:00 in
15 the morning; correct?

16 A. Correct.

17 Q. And you were then taken to the FBI offices
18 where you talked with Agent McCaskill and Agent
19 Sarah Rich; right?

20 A. Yes.

21 Q. And it was about 6:30 when you arrived at
22 the FBI offices, and these offices are in
23 Albuquerque; right?

24 A. Yes.

25 Q. And when you walked in, they gave you a

1 bottle of water, they took you to a particular room,
2 and made sure you were comfortable; right?

3 A. Yes.

4 Q. And they advised you that you were going
5 to be charged with a violent crime in aid of
6 racketeering with regard to the murder of Rolando
7 Garza; right?

8 A. Yes.

9 Q. And they advised you of your
10 constitutional rights; correct?

11 A. Correct.

12 Q. And then you spoke with them. And you
13 spoke with them for about two hours that morning;
14 right?

15 A. I did.

16 Q. And you understood your rights when they
17 advised you of those rights; correct?

18 A. Correct.

19 Q. You've been advised of the rights a number
20 of times in your life?

21 A. I have.

22 Q. The first thing they did is, they talked
23 to you about your background: Your name, your date
24 of birth, all that sort of stuff?

25 A. Yes.

1 Q. And you told them without any hesitation
2 that "My name is Eugene Michael Martinez"; right?

3 A. Yes.

4 Q. You gave them your date of birth; you were
5 able to remember it?

6 A. Yes.

7 Q. You told them that your nickname was
8 Little Huero, or sometimes you're also known as
9 Youngster; right?

10 A. Yes.

11 Q. Now, they then talked to you about how you
12 got to prison eventually, and you told them about
13 getting into trouble as a juvenile and having a lot
14 of behavioral problems and eventually picking up
15 juvenile charges?

16 A. Yes.

17 Q. You eventually were tried as an adult, and
18 in New Mexico at that time, they couldn't send a
19 juvenile to a facility with adults until such time
20 as you were convicted as an adult; right?

21 A. They were sending people, youngsters, to
22 prison at that time.

23 Q. Okay. But not until after they got
24 convicted were you ever housed with adults?

25 A. I was housed in BCDC with adults while I

1 was a juvenile.

2 Q. While you were waiting?

3 A. While I was awaiting sentencing.

4 Q. Okay. And then eventually you got out of
5 BCDC, you got sentenced, and you made your way to
6 the various facilities of DOC; right?

7 A. Yes.

8 Q. And in the year 2000 you went to Southern;
9 correct?

10 A. Yes.

11 Q. And when you got there, Alfred Lino Giron,
12 also known as Sexy Walker -- I don't think you were
13 able to recall his name initially -- is that who
14 Lino is?

15 A. Yes.

16 Q. Lino was in charge of SNM when you got
17 there; correct?

18 A. Yes.

19 Q. He had the keys?

20 A. Yes.

21 Q. And another of the leaders at that time
22 was Nick Chavez, also known as T Bone?

23 A. Yes.

24 Q. He was pretty high up?

25 A. Yes.

1 Q. Anybody else that you can recall that was
2 pretty high up in the SNM?

3 A. Not that I know of.

4 Q. Was Pate there?

5 A. Pate Esquibel? He was there, but I was
6 told that he wasn't part of the S; that he was more
7 of an advisor, but that he wasn't a carnal.

8 Q. Okay. What about -- Big Jake Armijo was
9 there, too, wasn't he?

10 A. When I was there?

11 Q. Yes.

12 A. He wasn't there. I don't remember him
13 being there.

14 Q. Didn't he come along sometime in 2001?

15 A. I don't recall.

16 Q. Okay. Leroy Lucero was there, wasn't he?

17 A. Leroy Lucero was there.

18 Q. Do you remember in 2005 -- or strike that.
19 February 5, 2001, Lino, and T Bone got shipped out?

20 A. Correct.

21 Q. And when that happened, you said on direct
22 examination, I think, that there was a lot of chaos
23 among the S, and people were jockeying for position;
24 but the person who rose to the top was Leroy Lucero;
25 right?

1 A. Tried to.

2 Q. He tried to?

3 A. Yes.

4 Q. Did anybody else also try to rise to the
5 top?

6 A. Not really.

7 Q. No?

8 A. They were trying for -- whoever was the
9 oldest member there were kind of trying to have
10 them -- trying to get order.

11 Q. And who were those older members?

12 A. One of them was Jesse Ibarra and Leroy
13 Lucero. But all the other youngsters didn't want to
14 listen to them. They weren't going to listen to
15 them. They said, "Jesse Ibarra never even earned
16 his bones. Why should we listen to him?"

17 Q. Rolando Garza was one of the youngsters,
18 also, wasn't he?

19 A. Yes, he was.

20 Q. And so was Frank Castillo, Pancho?

21 A. Yes.

22 Q. And those guys really didn't like Leroy
23 Lucero, did they?

24 A. Looney?

25 Q. Yeah.

1 A. Smurf brought him in.

2 Q. Smurf brought him in?

3 A. But Smurf was trying everything in his
4 power to save him.

5 Q. Okay. But the question is: Rolando,
6 Looney, didn't like the way Leroy was running the
7 show. You heard that, didn't you?

8 A. I don't know. I didn't hear -- I can't
9 recall that one.

10 Q. Okay. So at the time Lino and T Bone
11 left, the highest-ranking member probably would have
12 been Leroy Lucero?

13 A. I think there was other ones there, but no
14 one wanted to step up to get that attention, because
15 as soon as the hit happens, you have that attention;
16 when someone gets hit, they come to you. So there
17 were other members there, but didn't want to step
18 up.

19 Q. Okay. So it's safe to say, then, that
20 those other members that were there did not assume
21 any leadership role?

22 A. No.

23 Q. Who is Jim Moore? Do you remember Jim
24 Moore?

25 A. Jim Moore was a lieutenant, STG gang unit,

1 that just kept track of all the gang members.

2 Q. Now, when the STG unit back then --

3 A. Yes.

4 Q. -- when they had problems with the S
5 during that period of time that Leroy was in his
6 leadership role, he would go to Leroy and say, "Hey,
7 let's settle these guys down," and Leroy would try
8 to settle down the youngsters; right?

9 A. I knew of him doing that with Lino G, not
10 Leroy Lucero.

11 Q. Never with Leroy?

12 A. Never.

13 Q. But that was a tactic of Jim Moore's;
14 right?

15 A. Yes.

16 Q. So if it worked with Lino, is there any
17 reason to believe it would not have worked with
18 Leroy?

19 A. It could have, but I don't know if it was
20 going down like that.

21 Q. Okay. All right. You know Big Jake
22 Armijo; right?

23 A. I know his name. I've never met him.
24 I've never lived in a pod with him. I know what he
25 looks like, and I know his name, but that's as far

1 as it goes.

2 Q. Okay. If he drove up, as you say, in
3 2001, would you have known about it?

4 A. I would have known about it. I would have
5 heard mumbling about it. But I don't recall hearing
6 anything about him being there.

7 Q. Okay. Did you ever hear that Big Jake
8 brought orders to kill Looney and Castillo from
9 Angel Munoz?

10 MR. CASTELLANO: Calls for hearsay.

11 THE COURT: Mr. Castellano?

12 MR. CASTELLANO: The objection is hearsay,
13 Your Honor.

14 THE COURT: Well, why don't y'all
15 approach? Let's talk about this one.

16 (The following proceedings were held at
17 the bench.)

18 THE COURT: What do you think may be
19 hearsay? What are you trying to prove?

20 MR. COOPER: That he brought the order.

21 THE COURT: So it's for the truth. I
22 better exclude this one. I thought there might be
23 something I was missing, but I think this one I
24 better exclude.

25 MR. COOPER: Okay. Thank you.

1 (The following proceedings were held in
2 open court.)

3 BY MR. COOPER:

4 Q. On direct examination, you talked about
5 how for many months you knew that Rolando Garza was
6 going to get hit; right?

7 A. Sooner or later. There was talk about it.

8 Q. And you said "for many months." How many
9 months was that? Six months?

10 A. No, for a --

11 Q. Two or three months?

12 A. Maybe a month and a half to two months.

13 Q. A month and a half or two months?

14 A. Yes.

15 Q. So somebody must have brought an order
16 down that they be hit? That's how it happens;
17 right?

18 A. Yeah. Someone brought it down, but I was
19 a youngster, so I was never involved in any
20 conversation amongst higher-ups.

21 Q. Those are pretty high-level discussions.

22 A. Yeah, so I was never -- I was just a punk.

23 Q. You're a soldier. So you were just a
24 soldier?

25 A. Yes, I was just a soldier.

1 Q. So if a month and a half before he gets
2 there, you know, everybody knows that he's going to
3 get hit, the order has already come down; right?

4 A. I just knew.

5 Q. You knew?

6 A. That he had to come -- all he said is to
7 come and take care of his stuff. He was across the
8 street. He wasn't even in the main prison with us.
9 He was at the POU, Paul Oliver Unit, and there is a
10 workshop in the back and he was called for --

11 Q. Okay.

12 A. -- to come, to come over. They called him
13 and they said, "Hey, you need to come over here and
14 take care of your mess."

15 Q. Who is that? Who is "they"?

16 A. I don't know exactly who sent the message,
17 but I know they sent the message through a little
18 yard. And they called for him. And he wasn't even
19 working. He was at the POU unit and they sent a
20 message to someone that was working in the workshop
21 and told them, "He needs to pick up a report and
22 come and take care of this." They didn't say he
23 needs to come to get killed or, "We're going to come
24 and kill him." "Just come and take care of your
25 mess." That was it.

1 Q. And we're talking about Looney; right?

2 A. Looney.

3 Q. And he was at the POU. Is that also known
4 as the MRF?

5 A. Yes.

6 Q. And so that's a facility that's like a
7 quarter-mile away from the main facility at
8 Southern? I mean, it's separated by some distance;
9 correct?

10 A. It's separated.

11 Q. You have to go out the main gate, across
12 the parking lot, and down the road?

13 A. Yes.

14 Q. You and Smurf and Jesse Ibarra, in fact,
15 had talked about the fact that there was a hit on
16 Rolando; right?

17 A. I never talked with Jesse Ibarra and Smurf
18 together. But when it was time for the hit, he was
19 approached and said, "Hey, are you going to help out
20 with this?"

21 That was any conversation amongst me and
22 Jesse Ibarra. And me and Smurf almost had an
23 altercation over -- over it.

24 Q. And why is that? Tell me about that
25 altercation.

1 A. I was sitting in the day room watching TV,
2 and Smurf was there, and there was a few -- several
3 other inmates there that lived in the pod. And
4 Rolando Garza wasn't in the pod. He was out at the
5 gym or running around, whatever, and they were kind
6 of -- they were telling Smurf -- someone was telling
7 Smurf, "Hey, well, what are you going to do about
8 that? We need to take care of that."

9 And Smurf was trying to save him, to not
10 let the hit go through. And then they were all just
11 back and forth. And I just -- I'm the youngster,
12 but I threw my opinion in there, which I shouldn't
13 have, and I was, like, "Hey, well, how come you guys
14 are always talking behind his back? Wait till he
15 comes in the pod and talk to him instead of" --

16 And Smurf snapped at me, made a comment,
17 and I immediately got up and went upstairs, went
18 into my room. And a few minutes later he runs up to
19 the top tier and he comes in the room. And he
20 walks -- he walks and comes into my room, and so it
21 was almost an altercation. We were arguing, and we
22 were about to fight, but then we just -- Chris
23 Chavez and Willie Amador and Boxer were up on the
24 top tier. I told him, "Hey, just stand on that door
25 and don't let us out."

1 And he looked back and he seen Chris
2 Chavez and Boxer and Willie, and he thought twice,
3 and he said, "Never mind," and he walked out.

4 Q. So because Smurf brought Looney in, it was
5 his obligation under the rules of the S to hit him
6 if there was a hit; right?

7 A. Yes.

8 Q. Or at least to make sure that the hit
9 happened, if not personally do it; right?

10 A. Yes.

11 Q. Did you ever notice that Smurf was kind of
12 on edge or agitated when he was around Looney?

13 A. Yes.

14 Q. Did you feel that Smurf was feeling bad
15 because he knew that he had to hit him?

16 A. That, and also nervous about other people
17 coming to hit Looney. And if he's standing right --
18 standing up and protecting Looney this much, he's
19 probably going to get stabbed, too.

20 Q. Do you know if Leroy Lucero ever confirmed
21 the hit with Angel?

22 A. I don't know.

23 Q. Who is Angel, anyway?

24 A. He's supposed to be -- he was a
25 shot-caller. I never met him. I don't know him.

1 But I know he's supposed to be a shot-caller.

2 Q. What's his last name?

3 A. Munoz.

4 Q. Okay. And he's the medo, medo jefe;
5 right?

6 A. He was one of them.

7 Q. Who was higher than Angel Munoz?

8 A. I really don't know at that time who was
9 higher. I just knew him.

10 Q. You know who Juan Baca is; right?

11 A. I've heard of him.

12 Q. And Juan came along a lot earlier than you
13 did, obviously.

14 A. Yes.

15 Q. He was one of the founders?

16 A. So I hear.

17 Q. And when he went out of power, Angel
18 assumed power; right?

19 A. Right.

20 Q. And Angel did not need a tabla; right?

21 A. I don't know how it worked. I was so
22 young and I wasn't involved in any kind of
23 discussion like that, so I didn't know what a tabla
24 was.

25 Q. Earlier today you said Leonard Lujan saw

1 you walking from -- you just had a visit; correct?

2 A. Right.

3 Q. You had a visit, you were on your way back
4 to the pod, to your pod, and Leonard saw you walking
5 away towards your pod, which happens to be Looney's
6 pod, also; correct?

7 A. Correct.

8 Q. And he yelled or he whistled?

9 A. Yes.

10 Q. And he yelled at you, "Come here." And
11 you turned around and you went back; right?

12 A. Right.

13 Q. But you wanted to keep your distance from
14 him, didn't you?

15 A. Yeah.

16 Q. Because Leonard is known to rape inmates;
17 right?

18 A. I've heard him rape one person before, but
19 he's known to be doing all kinds of homosexual
20 activities that I just didn't feel comfortable with.

21 Q. So you were kind of afraid when he
22 whistled and said, "Come over"; you were not really
23 wanting to go see him, were you?

24 A. Not really.

25 Q. But you got kind of close, and you heard

1 what he had to say?

2 A. I heard what he had to say.

3 Q. And he said -- or he knew that you were
4 high; right? Were you high at the time?

5 A. I was high.

6 Q. "Break bread like Jesus, man. I am the
7 messiah"; you heard him say that; right?

8 A. Yes, I did.

9 Q. What did you think about that?

10 A. I thought he was full of it.

11 Q. Full of it. He thought, "Break bread like
12 Jesus said; I am the messiah"?

13 A. Yes.

14 Q. Who is this guy; right?

15 A. Exactly.

16 Q. He also told you that "I'm running the
17 pinta now"; right?

18 A. Correct. He said, "This is my
19 penitentiary now, and after we get off of lockdown,
20 this is my prison. Everyone is going to answer to
21 me."

22 Q. Okay. What is "pinta"?

23 A. The pinta is slang for prison,
24 penitentiary.

25 Q. So he gave you the message to take to

1 Willie Amador and Jesse Ibarra?

2 A. Yes, he did.

3 Q. But he didn't give you any details about
4 what message; he just says, "Tell them to handle
5 it"; right?

6 A. "Tell them to handle that, go and handle
7 that in the morning and strangle him."

8 Q. But you didn't know that they were
9 supposed to be strangled at that point in time,
10 because you went back and you asked him, "What's it
11 about?"

12 And he said, "You know already"; right?

13 A. Yeah, because there was so much talk of
14 it, so I knew.

15 Q. So he didn't tell you that they needed to
16 be strangled in the morning or anything like that.
17 He just said, "Tell him to handle it. You know
18 already"; right?

19 A. Yeah.

20 Q. And because the word had already been on
21 the streets for a month and a half, you said,
22 "Okay," and you went, you told Willie Amador; right?

23 A. No.

24 Q. You didn't?

25 A. I -- right after he told me, I thought,

1 this guy is full of it because the way he approached
2 me, the way he was acting; and I knew just for the
3 fact that Billy was here, there is no way this guy
4 is calling it. This order is coming from Billy, and
5 so I walked straight to the library and talked to
6 Billy.

7 Q. Okay.

8 A. And then I walked back and told Willie
9 Amador.

10 Q. But there was nothing from Leonard about
11 what "handle it" meant. You just knew because there
12 had been a lot of talk about him getting hit; right?

13 A. Yes, amongst --

14 Q. Amongst the S.

15 A. Amongst us, we can talk without saying a
16 full sentence of a correct word. We know. We'll
17 use the slang words, we'll use gestures, and we just
18 know. It's a gang mentality, prison slang, prison
19 slang, Spanish, Spanglish, and we just find a code
20 that we know. Just handle it and you just handle
21 it. That's it. You know what to do or you'll get
22 killed.

23 Q. Had you spent much time around Leonard
24 Lujan?

25 A. Yes. He lived in the pod with me, you

1 know, too, for a few months.

2 Q. Okay. So when he said, "Handle it," you
3 knew that he meant hit Rolando?

4 A. Yes.

5 Q. Did you ever talk to Jesse, or was it just
6 Willie?

7 A. Willie.

8 Q. Okay. Did you tell Willie that you had
9 already confirmed it with Billy?

10 A. I didn't tell him that.

11 Q. No? How come?

12 A. I didn't even want to throw Billy's name
13 in there, or show him that I communicated nothing
14 with him, to protect him, and just keep it at
15 Leonard.

16 Q. Okay. So you got indicted back in 2003
17 and you're looking at a mandatory life sentence,
18 should you be convicted of that charge; right? When
19 you got indicted for the murder?

20 A. Yes.

21 Q. Okay. And for the 18 months that you --
22 18 months after you were arrested, you entered a
23 plea agreement; right?

24 A. Correct.

25 Q. And you entered this plea agreement

1 pursuant to a federal rule of criminal procedure
2 that says that if you do what the people who sit at
3 this table want you to do, and they like what you
4 do, that they'll write a motion, they'll file a
5 motion with the Court, tell this judge that you've
6 been helpful, and they'll ask the judge to give you
7 a lower sentence; right?

8 A. Correct.

9 Q. And that's the only way to get out of an
10 otherwise mandatory life sentence; correct?

11 A. Correct.

12 Q. So if the judge wanted to, he could give
13 you probation, right, if they do a motion for 5K?

14 A. I was told that you're not able to receive
15 probation for the charge.

16 Q. Okay. And that's true. That is true.
17 But you could get a sentence of time served; right?

18 A. Yes.

19 Q. Okay. And as of May 3rd, you will have
20 spent 30 months in prison awaiting this trial;
21 right?

22 A. Yes.

23 Q. So you entered into the plea agreement and
24 not only do you get to avoid the mandatory life
25 sentence, according to this plea agreement, but if

1 the Government chooses to file their motion for 5K,
2 you can't get a sentence any higher than 20 years;
3 right?

4 A. Right.

5 Q. Your lawyer did a good job for you; right?

6 A. Yes.

7 Q. So you're not looking at the life
8 sentences that all these guys are looking at, are
9 you?

10 A. Possibly.

11 Q. Possibly?

12 A. It's all up to the judge at the end of the
13 day.

14 Q. But you think you're going to go home with
15 credit time served, don't you?

16 A. I don't know what's going to happen.

17 Q. That's what you're hoping for; right?

18 A. I hope and I pray and I have faith. But
19 at the end of the day, it's up to the judge.

20 Q. On the first morning of your arrest, back
21 in December of 2015, you never told the FBI agents
22 in that two-hour-long interview that Billy Garcia
23 had anything to do with anything, did you?

24 A. As far as the murder, no.

25 Q. You didn't, did you?

1 A. I didn't.

2 Q. You agreed to debrief. And the first
3 debriefing you had, I believe, was on May 3 of 2015,
4 two days before you entered your plea agreement;
5 right?

6 A. Correct.

7 Q. And where was that debriefing? Was it in
8 Albuquerque? Was it down here?

9 A. It was in Albuquerque.

10 Q. It was in Albuquerque?

11 A. Yes.

12 Q. Were you taken out of your -- and you were
13 housed at the time where?

14 A. I was housed in Estancia, New Mexico. I
15 was in a pod that was all of the SNM pod.

16 Q. Okay.

17 A. And I was housed there amongst everyone
18 else.

19 Q. So you were taken out of that pod that day
20 and you went to the FBI offices?

21 A. Yes.

22 Q. And you gave a statement?

23 A. I did.

24 Q. You were then taken back to Estancia;
25 right?

1 A. Estancia.

2 Q. And you spent that night there, and the
3 next day, and then on May 5 you were brought -- or
4 let me back up. Did you go back to Estancia after
5 that first day, on May 3, after that first debrief?

6 A. I did.

7 Q. And then what did you do? What happened
8 the next day?

9 A. I went back and I got moved.

10 Q. You went back and you got moved right
11 then?

12 A. Not right then. I stayed there another
13 night.

14 Q. Another night?

15 A. Yes.

16 Q. So, then, on May 5th -- that was two days
17 later; right?

18 A. Yes.

19 Q. On May 5th, you came to court here in Las
20 Cruces; right?

21 A. Wrong.

22 Q. No? You did it up in Albuquerque?

23 A. Yes.

24 Q. And you entered your plea in front of
25 Judge Molzen?

1 A. I did.

2 Q. And that plea was, like, at 10:30, 10:40
3 in the morning; right?

4 A. Correct.

5 Q. And it took about a half an hour?

6 A. Yes.

7 Q. And after you entered that plea, did you
8 then have another meeting with the FBI?

9 A. I did.

10 Q. And where was that meeting?

11 A. Albuquerque.

12 Q. At the U.S. Attorney's Office or the FBI
13 offices?

14 A. The FBI office.

15 Q. And after you finished that debriefing --
16 and a debriefing is basically where you sit down at
17 a table with the FBI agents and U.S. Attorneys, and
18 you answer their questions and you tell them
19 everything you know about everything; right?

20 A. Correct.

21 Q. And so you did that after you entered the
22 plea. And how long did that debriefing process
23 take?

24 A. Oh, maybe an hour.

25 Q. Okay. And after that, where did you go?

1 You didn't go back to Torrance that day, did you?

2 A. I ended up going to Cibola County in New
3 Mexico.

4 Q. Okay. And in Cibola County, at the
5 detention facility there, you weren't housed with
6 anybody who still had pending charges, anybody who
7 had not yet cooperated, were you?

8 A. No.

9 Q. So anybody that you saw there had already
10 signed an agreement and had agreed to cooperate;
11 right?

12 A. Right.

13 Q. So you felt safe, or safer?

14 A. No.

15 Q. No?

16 A. No.

17 Q. But you weren't with any of these
18 individuals, were you?

19 A. No.

20 Q. So you've now had two debriefs, one on May
21 3rd and May 5th. Now you're housed at Cibola. You
22 stay at Cibola for how long?

23 A. Maybe two and a half to three months.

24 Q. Okay, and within probably two weeks, a
25 little less than two weeks, you have another debrief

1 where you give more information to the Government;
2 right? And you're taken to the FBI offices on May
3 17, and you again talk to the Government about
4 whatever it is they want to know, whatever it is
5 that you have to tell them; correct?

6 A. Correct. It was just all about this 2001
7 incident, nothing else.

8 Q. And likewise, the debriefs that occurred
9 on May 3rd and May 5th dealt with the 2001 incident;
10 correct?

11 A. Correct.

12 Q. Okay. So that's three debriefs in a
13 period of about two and a half weeks, all centered
14 on information that you had to give the Government
15 about the 2001 homicides?

16 A. Correct.

17 Q. And when did you next talk to them? After
18 the May 17th debrief, when did you next talk to
19 them?

20 A. It was months later. I think it was in
21 the beginning of November. I don't know the exact
22 date.

23 Q. You had a tablet; right?

24 A. Yes.

25 Q. You know what a 302 is; right?

1 A. Yes.

2 Q. A 302 is a document that's generated by
3 the FBI agent setting forth everything that a
4 cooperating individual -- or whatever information
5 somebody is telling them; right?

6 A. Correct.

7 Q. And in this case, it would be you, a
8 cooperating individual; right?

9 A. Correct.

10 Q. You've seen the 302s that have been
11 generated with regard to you, haven't you?

12 A. Yes.

13 Q. Were those 302s ever placed on your
14 tablet?

15 A. Yes.

16 Q. So you had those 302s and you've been able
17 to look at them for a long, long time. Do you still
18 have your tablet?

19 A. I don't.

20 Q. When did you last have your tablet?

21 A. It's been about a month ago.

22 Q. Okay. What happened? How come you don't
23 have it anymore?

24 A. They came and took it, and my paperwork.
25 They didn't give me a reason. They just came and

1 said they were taking it. I figured they were
2 uploading it, whatever.

3 Q. But you have no reason to believe that
4 you're not going to get it back; right?

5 A. I don't know if I will or will not. I
6 haven't asked them.

7 Q. Okay. You've read the 302 that was
8 generated on May 30, 2017; right? And that talks
9 about the three debriefs that you had on May 3, May
10 5, and May 17?

11 A. Yes.

12 Q. And in none of those debriefs do you ever
13 say that Billy Garcia anything to do with the 2001
14 murders; right?

15 A. Right.

16 Q. On November 2, 2017, you say in your
17 debrief for the first time that Billy had something
18 to do with it; right?

19 A. Correct.

20 Q. And you said, "I was afraid to say
21 anything," because you were living with him.

22 A. Yes.

23 Q. But you weren't living with him, were you?

24 A. Not no more. I was -- when I first
25 debriefed, I was living with him. And I just didn't

1 want to say nothing bad about him. I didn't want
2 no -- I just didn't want to say nothing bad about
3 him.

4 Q. Okay. But the reason that you gave the
5 Government for not ever having included him in the
6 first place is that you were afraid to go back,
7 because you were living amongst all of these guys.
8 But that was only the one night. That was only on
9 May 3. On May 5 and May 17, you were in Cibola;
10 right?

11 A. Correct.

12 Q. A motion to determine competency was filed
13 on your behalf, correct, in this case?

14 A. Correct.

15 Q. And that motion was filed because
16 previously in a state court proceeding you had five
17 cases that were dismissed because there was a
18 finding that you were not competent to stand trial;
19 right?

20 A. Yes, that's true.

21 Q. And so you thought, hey, it worked there;
22 I got out of having to accept responsibility for
23 five different cases. Let's do it here; right?

24 A. I had the idea.

25 Q. In fact, you worked on that idea a lot.

1 You told Tim Martinez, "You think they're listening
2 to the phones? Do I got to play crazy part on the
3 phone?"

4 You told Timothy Martinez, didn't you,
5 that you had a lot of experience taking the crazy
6 tests and knew how to manipulate them so you looked
7 like you were crazy; right?

8 A. Wrong.

9 Q. You didn't have that conversation?

10 A. Never had that conversation.

11 Q. Never had that conversation with Timothy
12 Martinez?

13 A. Never.

14 Q. With anybody?

15 A. Never.

16 Q. Did you have experience taking the crazy
17 tests?

18 A. I've taken many competency tests since I
19 was a child, since elementary school, since teachers
20 noticed difficulties. So I've been taking them for
21 years.

22 Q. When you first got to the facility out in
23 Los Angeles, at the Metropolitan Detention Center
24 there in downtown LA, and you first met with the
25 psychologist that was interviewing you to determine

1 competency, you told her you couldn't read; right?

2 A. Correct.

3 Q. But you've been reading your tablets for
4 30 months now, haven't you?

5 A. I have.

6 Q. You can read?

7 A. I learned to read.

8 Q. You're minimizing your participation in
9 this murder, aren't you?

10 A. No.

11 Q. Didn't you tell Leroy Lucero that you
12 finished Rolando Garza off?

13 A. No.

14 Q. You told him, "I wasn't the lookout, I
15 finished him off"?

16 A. I have never ran into Leroy Lucero since
17 the day he left Las Cruces, New Mexico.

18 Q. So if he says that, it's not accurate?

19 A. Correct. That's not accurate.

20 Q. And if Robert Lovato says that you told
21 him, "I'm down to put in work because I choked that
22 fucker out," that's true, isn't it? You did tell
23 him that?

24 A. I did not tell him that, but he knows my
25 history. And I don't even have to tell him that.

1 But I never told him that.

2 Q. Okay. So when you filed the motion to
3 determine competency, what you were trying to do was
4 pull the wool over this judge's eyes, weren't you?

5 A. At the time, he wasn't the judge --

6 MR. CASTELLANO: Objection, Your Honor.
7 He testified his counsel filed the motion on his
8 behalf.

9 THE COURT: Well, I'll allow the question.
10 Overruled.

11 A. At the time, he wasn't the judge. And at
12 the time I got arrested, they immediately were aware
13 of my competency test through the State. So they --
14 before they wanted to carry on with court, they
15 said, "We need to make sure he's either competent or
16 not competent."

17 I didn't ask for it. They did it, and I
18 went with it.

19 BY MR. COOPER:

20 Q. Okay. And you had a competency hearing
21 that spanned over the course of two days; correct?
22 A hearing to determine whether or not you were
23 competent? After all the evaluations were done,
24 didn't you go to court?

25 A. Oh, yes, I did.

1 Q. And that hearing was in front of Judge
2 Browning, wasn't it?

3 A. Correct.

4 Q. And at that time, you were still trying to
5 convince Judge Browning that you were crazy.

6 A. Oh, I wasn't trying to convince him. They
7 were reading the paperwork and speaking on my
8 behalf.

9 Q. But you were trying everything you could
10 do to avoid responsibility for your conduct in this
11 case; right?

12 A. Somewhat.

13 Q. Somewhat?

14 A. If I could go home and avoid
15 responsibility, anyone would want to go home.

16 Q. Okay. So that's what you wanted to do;
17 right?

18 A. Right, but I'm taking responsibility now.

19 Q. But only after you heard that you couldn't
20 pull the wool over Judge Browning's eyes; right?

21 A. I couldn't take a plea bargain. I
22 couldn't do nothing. My lawyer couldn't even speak
23 for me and raise arguments in the courtroom until I
24 was either competent or not competent.

25 Q. And so you went? Okay. And the judge --

1 the forensic psychologist in Los Angeles, who worked
2 for the Bureau of Prisons, a Department of
3 Justice -- Department of Justice, Bureau of
4 Prisons -- she found that you were malingering;
5 right?

6 A. Her opinion was that I was malingering.
7 Yeah.

8 Q. And malingering is when someone falsely or
9 grossly exaggerates psychological symptoms motivated
10 by external incentives, such as evading criminal
11 prosecution; right?

12 A. Them were a lot of big words. But I guess
13 lying a little bit, but I didn't understand all them
14 words you said.

15 Q. When you first started your test out in
16 Los Angeles, you gave the psychologist some
17 background information; correct?

18 A. Correct.

19 Q. Name, age, birthday. You couldn't give
20 her -- you lied about your middle name; right? You
21 couldn't remember. "Well, I don't know, Mike or --
22 it starts with an M, I think." That's what you told
23 her; right?

24 A. Correct.

25 Q. And you didn't know how old you were;

1 right?

2 A. I try not to keep track of it. As you get
3 older, you try not to keep track of your age.

4 Q. Just wait.

5 So you had an evaluation by Dr. Harrington
6 in 2013, and when you had that evaluation, you had
7 four pending cases in the Second Judicial District
8 in Albuquerque; right?

9 A. Correct.

10 Q. And you had one case that was indicted in
11 2012 for possession of a controlled substance,
12 heroin; conspiracy to possess heroin; tampering with
13 evidence; conspiracy to tamper; possession of drug
14 paraphernalia; escape from a peace officer; and
15 resisting arrest, and that related to BCSO Deputy R.
16 Garcia. All that occurred in September of 2011.
17 That was one of the cases that got dismissed; right?

18 A. Correct.

19 Q. You were also charged by an indictment
20 with trafficking by possession with intent to
21 distribute heroin, and resisting an officer, and
22 this regarded -- it was in regard to an officer at
23 MDC, it looks like, a CO; right?

24 A. Correct.

25 Q. And that occurred on June 23, 2012. You

1 were also charged in another separate indictment for
2 residential burglary in April of 2012 at 3104 Betts
3 Drive, Northeast, where you broke into a home and
4 you stole some stuff. And a res bur carries three
5 years; the larceny carries -- actually, in that case
6 it was over \$2,500, so that's another three years;
7 right?

8 A. Correct.

9 Q. And the trafficking by possession with
10 intent to distribute, that carries nine years in
11 prison. The possession of heroin on the first case
12 you were probably looking at 12, 15 years; nine
13 years on the second one, six years on this. Plus
14 you're a habitual offender; right?

15 A. Correct.

16 Q. And if the DA so decided, they could
17 charge you with habitual offender enhancement and
18 enhance each one of those felonies by, in your case,
19 probably four or eight years.

20 A. I don't understand how the habitual stuff
21 works, but I know I was facing time.

22 Q. You were facing some time.

23 A. Right.

24 Q. You had another indictment where you were
25 charged with a residential burglary occurring on

1 September 27, 2012, at 3110 Betts Drive, Northeast,
2 three houses down from the place you burglarized
3 previously. You were caught with burglary tools,
4 larceny, and criminal damage to property. So in
5 that case, you were looking at probably five years
6 without any habitual offender time added to each one
7 of those felonies.

8 And then finally, there is another
9 residential burglary that occurred on May 21, 2012,
10 in the same neighborhood, I might add. And that
11 was -- you were just arrested on that one; there had
12 not yet been an indictment; right? That was still a
13 pending criminal complaint?

14 A. I can't recall that one.

15 Q. That one occurred at 10308 Toltek,
16 Northeast, and this happened on May 21, 2012. And
17 Officer Franklin was dispatched to that address
18 reference a residential burglary. He made contact
19 with Phillip Cruz. Does that ring a bell?

20 A. No, I don't recall it.

21 MR. COOPER: Your Honor, may I approach
22 the witness?

23 THE COURT: You may.

24 BY MR. COOPER:

25 Q. Mr. Martinez, do you want take a minute

1 and look at that criminal complaint?

2 A. I will. It's here in black and white,
3 it's there, it must have taken place.

4 Q. Thank you, Mr. Martinez. So all five of
5 those cases got dismissed when you were able to
6 convince Dr. Harrington that you were not competent
7 to stand trial; right?

8 A. They were dismissed.

9 Q. Okay. You were never on any psychotropic
10 medication while you were at any of the DOC, the
11 Department of Corrections, facilities, at any of the
12 prisons; right?

13 A. No.

14 Q. And I don't want to go through each and
15 every one of these for the entire period that you
16 were in custody, but there was no indication that
17 you had any psychological problems while you were in
18 custody, except perhaps the PTSD, because of your
19 father and brother. But short of that, it's --
20 every time the docs would go look at you, they would
21 say no sign of psychosis or deterioration of your
22 mental health. I mean, every month there were those
23 sorts of reports that, yeah, you're doing good;
24 right?

25 A. Correct. I was self-medicating.

1 Q. Doing your heroin?

2 A. Correct.

3 Q. Anything else?

4 A. Marijuana.

5 Q. So a minute ago, you said that anybody
6 would want to go home if they could; right?

7 A. Correct.

8 Q. You want to get out of prison. I get it.
9 I mean, I understand. And you'd do anything you
10 could possibly do to get out, because prison's not a
11 good place, is it?

12 A. No, it's not.

13 Q. You have little cells with stainless steel
14 toilets, and a stainless steel little sink, and a
15 concrete bed with a thin mattress over the top of
16 it; right?

17 A. Correct.

18 Q. I mean, the food is not that good?

19 A. No.

20 Q. You don't get -- it's just not a good
21 place to be. You have a family?

22 A. I do.

23 Q. You have a wife; right?

24 A. I do.

25 Q. Any children?

1 A. No.

2 Q. Okay. How long have you been married?

3 A. About nine years.

4 Q. And your wife -- her name is Nicole;
5 right?

6 A. Nicole.

7 Q. And you believe that you're going home
8 with a sentence of credit for time served, don't
9 you?

10 A. I hope and I pray to God that I go home.
11 But at the end of the day, I don't know what's going
12 to happen.

13 Q. You've talked to the lawyers that
14 represent the Government in this case?

15 A. Yes.

16 Q. And you've talked to them about the
17 sentence that you're likely to get; right?

18 A. I ask them about it.

19 Q. And they have told you that there's a good
20 chance you're going home with a credit time served
21 sentence, haven't they?

22 A. They have told me over and over again that
23 they cannot make promises and it's not up to them.
24 It's up to the judge.

25 Q. You have some relatives by the name of

1 Rose and Frank; right?

2 A. Correct.

3 Q. Is it an aunt and uncle or --

4 A. They are cousins. They're my mother's
5 first cousins, but I call them aunt and uncle
6 because throughout the years as a child, all the
7 problems that would happen, they would take me from
8 my family. And I was real close to them, and they
9 would help me.

10 Q. They were there for you, and they are kind
11 of like your aunt and uncle, but --

12 A. Yes.

13 Q. I'm not sure what that really is, but
14 let's call them an aunt and uncle; right?

15 A. Correct.

16 Q. I'd like you to listen to --

17 THE COURT: Hold on.

18 MR. CASTELLANO: I'd like to object. I'm
19 not sure if this is for impeachment, or what the
20 purpose of the recording is.

21 MR. COOPER: For impeachment, Your Honor.

22 THE COURT: What statement are you
23 impeaching?

24 MR. COOPER: The statement that he says
25 that he has not had the discussion with them about

1 getting a sentence of credit for time served, and
2 this is going to be evidence of that.

3 THE COURT: All right.

4 (Tape played.)

5 BY MR. COOPER:

6 Q. Is that your voice?

7 A. That's my voice. That's me.

8 Q. And did you hear either Rose or Frank on
9 the other end of it?

10 A. I heard my Auntie Rose. I'm not too sure
11 about my Uncle Frank, but he possibly could have
12 been on the other line.

13 Q. Okay. But you heard yourself and your
14 Auntie Rose.

15 A. I sure did.

16 Q. I'm going to skip now to another part of
17 this conversation. That was just the hello part.

18 A. All right.

19 THE COURT: Would it be all right if we
20 took this up after a break?

21 MR. COOPER: Certainly, Your Honor.

22 THE COURT: Let's be in recess for about
23 15 minutes. All rise.

24 (The jury left the courtroom.)

25 THE COURT: All right. We'll be in recess

1 for about 15 minutes.

2 (The Court stood in recess.)

3 THE COURT: All right. Are all the
4 defendants back in? Attorneys for each of the
5 defendants?

6 Mr. Benjamin, I think the best way to keep
7 our record clear is: Why don't you -- if you're
8 handing the attachments to your filing, I think you
9 better just file amended ones. So rather than me
10 trying to figure out what to do with this, why don't
11 you file an amended and attach this to it.

12 MR. BENJAMIN: Understood, Your Honor.

13 THE COURT: What do you think this is?
14 Go ahead and line them up.

15 What do you think this is?

16 MR. BENJAMIN: Your Honor, this was a
17 document that was in the motion I referenced that
18 there was I don't know how many pages, but I've been
19 going through them all day yesterday and today.

20 THE COURT: What do you think you've
21 received? What is the Government telling you these
22 documents are?

23 MR. BENJAMIN: A box of documents that
24 weren't turned over from the New Mexico State
25 Police.

1 THE COURT: State police? Is this a box
2 of documents that showed up -- I think Mr. Acee said
3 there was a --

4 MR. BENJAMIN: No, this is a box of
5 documents; it's my understanding Agent Stemo went to
6 New Mexico State Police on April 11 and --

7 THE COURT: Found --

8 MR. BENJAMIN: -- as they were handing her
9 stuff, found more stuff.

10 THE COURT: Okay. So what do you think
11 this -- I'm going to have Ms. Bevel mark this so
12 that the record is clear as to what we're looking
13 at. But I still think it would probably be good if
14 it's part of the CM/ECF. What do you think this is?

15 MR. BENJAMIN: The document for the record
16 is what I've marked in pen on the bottom right-hand
17 corner as Exhibit A. It's a note from what I
18 believe is Agent Rich Williamson. The Court will
19 hear from him. He was the lead case agent in this
20 case in the 2012 time frame. November 29, 2012, his
21 note says that Sleepy, Daniel Orndorff, I think it
22 says, never said, "They did it," essentially, which
23 is going to directly contradict not, I believe,
24 testimony but implications that come in regarding
25 Daniel Orndorff. And it's the first time I've seen

1 that note, Your Honor. And my concern is: What
2 else is in that file? There is -- Agent Stemo went
3 looking for phone records. She found some phone
4 records. I've also come across since -- I think it
5 was April 16, the FBI, it appears, sent out requests
6 for additional phone records. And those were in the
7 documents that were turned over.

8 THE COURT: But you're talking about a
9 banker's box?

10 MR. BENJAMIN: It was disclosed to me
11 electronically, Your Honor. The only reason I say
12 box is, one of the titles of the 302s is redacted
13 documents from New Mexico State Police box, I think.

14 THE COURT: Okay.

15 MR. BENJAMIN: So that's why I raise it,
16 because this is in the State file that they've been
17 turning over. And as I said in the motion, Agent
18 Madrid is the person who took Joe Gallegos into
19 custody in 2015 on behalf of the FBI.

20 THE COURT: Well, you know, I don't -- I
21 want to mark this. Will this be Exhibit 11 to your
22 clerk's minutes?

23 THE CLERK: Yes.

24 THE COURT: We'll mark it as clerk's
25 exhibits, but I think it needs to be part of CM/ECF.

1 MR. BENJAMIN: I understand.

2 THE COURT: Just my impression, it doesn't
3 look like a terribly hot document. But I may be
4 missing something.

5 MR. BENJAMIN: I haven't gone through all
6 of it. I'm bringing it to the Court's attention.
7 My concern is we're starting that case tomorrow, and
8 I don't know what's in there.

9 THE COURT: Keep me posted.

10 MR. CASTLE: Your Honor.

11 THE COURT: All right. All rise.

12 (The jury entered the courtroom.)

13 THE COURT: All right. Everyone be
14 seated.

15 All right. Mr. Martinez, I'll remind you
16 that you're still under oath.

17 Mr. Cooper, if you wish to continue your
18 cross-examination of Mr. Martinez, you may do so at
19 this time.

20 MR. COOPER: Thank you, Your Honor.

21 THE COURT: Mr. Cooper.

22 BY MR. COOPER:

23 Q. I'm going to play this telephone call for
24 you that we just started before we took a break.

25 A. Yes, sir.

1 Q. We're having some technical difficulties
2 here, Mr. Martinez. I think we're going to try to
3 play this over.

4 A. All right.

5 Q. And listen to it, because after it's over,
6 I'm going to ask you some questions about what we
7 have heard.

8 A. Yes, sir.

9 (Tape played.)

10 Q. That was your Uncle Frank and your Aunt
11 Rose --

12 A. Correct.

13 Q. -- you called them. Rose is your
14 aunt's -- I mean your mother's cousin?

15 A. First cousin.

16 Q. Frank has known Randy Castellano for a
17 long time, hasn't he?

18 A. I don't know exactly how long, but I think
19 he's been in the courtroom, or knows him just from
20 rubbing elbows at work.

21 Q. His last name is Ortiz, isn't it?

22 A. Correct.

23 Q. And he is a former agent for the Bureau of
24 Alcohol, Tobacco, and Firearms?

25 A. Correct, retired.

1 Q. Retired. And he's still in law
2 enforcement, isn't he?

3 A. He is. I don't know exactly what he does,
4 but I know that he's still doing -- serving the
5 community.

6 Q. You said in this phone conversation -- you
7 were talking about when Frank went in the courtroom,
8 he went in and he testified at your competency
9 hearing, didn't he?

10 A. Correct.

11 Q. And when he walked into the courtroom, the
12 people sitting at the Government's table -- their
13 jaws dropped; right?

14 A. I exaggerated, just to -- the way I
15 exaggerated sometimes on my competency test, and
16 just to make them feel good and to make myself feel
17 good. But they did recognize each other.

18 Q. Okay. And he's worked for many years on
19 cases with Randy Castellano, hasn't he?

20 A. I don't know exactly if he's worked with
21 cases or no, but I know they know each other.

22 Q. "Oh, yeah, yeah, yeah. You can't talk
23 about it, but the thing is, if you put it on paper,
24 it could alert others." That's what Frank said;
25 right?

1 A. That's what he spoke and told me. I
2 asked, and they said, "We can't make no deals. We
3 can't put nothing on paper."

4 Q. So this conversation started out by you
5 asking your uncle -- your uncle who comes to court
6 and sits at counsel table with the Government --
7 you're asking him, "If the Government is going to
8 stick like how they said they were going to help me
9 and other things, like -- you weren't in there, but
10 they just told me that most -- they're pretty sure
11 when this is all said and done, that it's a good
12 possibility that I'll get time served."

13 And you wanted to know from Frank and Rose
14 whether these guys were good for their word; right?

15 A. Correct.

16 Q. So you think that you're going to get
17 credit for time served by coming in here and
18 testifying in front of these ladies and gentlemen of
19 the jury?

20 A. I don't know what's going to happen. They
21 told me I could get a life sentence, I could get a
22 zero to 20. I could get time served. So I'm having
23 that hope and faith that I get time served.

24 Q. And it's really important for you to do
25 the best you can possibly do while you're sitting

1 here; right?

2 A. Correct.

3 Q. And because you want to try to impress the
4 people who sit at that table; right?

5 A. I just want to tell the truth.

6 Q. You want to tell the truth. But in
7 telling the truth, you want to do everything you can
8 possibly do to convince them that they ought to
9 write a good letter to the judge; right?

10 A. I'm not convincing them. I'm convincing
11 the jurors.

12 Q. Okay. You, who exaggerate. Let's talk
13 about your exaggerations. And pretty soon we're
14 going to come back to more time served phone calls.
15 Okay?

16 A. Okay.

17 Q. Everything you did and said with regard to
18 your forensic evaluation out in Los Angeles was a
19 lie, wasn't it?

20 A. No, it wasn't a lie. Not everything.

21 Q. Not everything?

22 A. No.

23 Q. When you said you were unable to remember
24 if you were 35 or 36 years old, that was a lie;
25 right?

1 A. No.

2 Q. When you were unable to say what your
3 middle name was -- you didn't know your middle name?

4 A. That was a lie.

5 Q. That was an exaggeration; that was a lie?

6 A. That was a lie or an exaggeration, either
7 one.

8 Q. Big time; right?

9 A. Correct.

10 Q. There's nothing more basic than our name;
11 right?

12 A. Correct.

13 Q. And you tried to tell this psychologist
14 that "I don't know my middle name. It begins with
15 an M, I think."

16 You described being left alone at home
17 without supervision. Did that happen?

18 A. All the time.

19 Q. All the time? In fact, before I forget,
20 you said you were in the car when your father and
21 brother were shot and killed?

22 A. I was out, not in the car; I wasn't in the
23 car.

24 Q. Oh, you weren't in the car?

25 A. No.

1 Q. So where did this take place? Describe it
2 to me.

3 A. It took place in Albuquerque.

4 Q. Um-hum.

5 A. On 4th Street, in the North Valley, at a
6 bar.

7 Q. What was name of the bar?

8 A. Sal's Liquor.

9 Q. Okay. So you were in the parking lot at
10 Sal's. And did your brother and father go into
11 Sal's?

12 A. They drove around.

13 Q. I'm sorry?

14 A. It was a drive-through.

15 Q. Okay. And you weren't -- what were they
16 driving?

17 A. A car.

18 Q. Okay. You were not in the car?

19 A. I wasn't in the car.

20 MR. CASTELLANO: I'm going to object for
21 the same reason defense counsel objected earlier to
22 this line of questioning. They said it went back
23 too far.

24 MR. COOPER: Your Honor --

25 THE COURT: I think I now see the

1 relevance of it, and now we've been talking a fair
2 amount about the impact that it had on him. So I
3 think it is more relevant than I first thought. So
4 overruled.

5 MR. COOPER: Thank you.

6 BY MR. COOPER:

7 Q. So you're not in the car. What are you
8 doing at the parking lot of Sal's Liquors, if your
9 brother and dad are in the drive-through?

10 A. What am I doing? You could drive through
11 the window. I seen them on TV laying there dead.
12 They showed it. And seen that, seen it. It was
13 so -- you know, it was a big, big thing to me.

14 Q. I thought you said that you were in the
15 car and you almost got killed.

16 A. No. But we've had shoot-outs with these
17 guys. I've almost got killed several times.

18 Q. But you testified and you also told the
19 psychologist that you were this close to getting
20 killed, because they went to shoot you, but the gun
21 jammed, so they couldn't kill you?

22 A. I did.

23 Q. You said that.

24 A. I told her that.

25 Q. That's a lie; right?

1 A. Correct.

2 Q. So you used the death of your father and
3 brother to try to convince that psychologist that
4 you were crazy?

5 A. I told her that. I told her that.

6 Q. But you weren't there?

7 A. No.

8 Q. So right after that, you went into CYFD
9 custody; is that correct?

10 A. It was the juvenile system. I don't know
11 if it was exactly CYDF (sic), but they had custody
12 of me, the juvenile system.

13 Q. Did you go to a foster home?

14 A. Almost. I was in, like, a group home. It
15 was called La Buena Vida. It's in Santa Fe. They
16 have boys and girls. And I don't know if it's like
17 a foster home, group home. I was there. And then
18 from there I went --

19 Q. How soon after your father and brother
20 were murdered did you go to La Buena Vida?

21 A. I think after they were murdered I went --
22 they took me to Sequoia treatment center.

23 Q. But you went to Sequoia because you had
24 behavioral problems. You were acting up; right?

25 A. There was numerous things that I went, but

1 one of the big ones was because of my dad and
2 brother's death.

3 Q. And because you were using drugs, and you
4 were sniffing paint and sniffing glue and sniffing
5 rubber cement, getting high, drinking, all that kind
6 of stuff, too; correct?

7 A. Correct.

8 Q. And how long after your father and brother
9 were murdered did you go to Sequoia?

10 A. Right after. Within a couple of months
11 after the judge sentenced me, within a month, or --
12 I don't know the exact date.

13 Q. So you went to Sequoia as a result of a
14 sentence in Children's Court; right?

15 A. Correct.

16 Q. And you went there because of your
17 criminal conduct, which included the drug use and
18 probably a res bur, or something else?

19 A. I can't recall every charge. But there
20 were some charges in there. But they knew I had
21 problems, and instead of sending me to juvenile hall
22 or the boys school, and because of the incident with
23 my dad and brother, they said, you know, we'll send
24 him for treatment and try to get him some help, and
25 cope with what he's going through.

1 Q. And somewhat as punishment; right?

2 Because you had been committing crimes?

3 A. Yes.

4 Q. So when you told the psychologist in Los
5 Angeles that you went there because you had mental
6 health issues, that was a lie. That wasn't the sole
7 reason for going to Sequoia, was it?

8 A. I do have mental health issues.

9 Q. Okay. But that's not why you went --
10 that's not why the judge sent you to Sequoia, was
11 it?

12 A. It was a big part of it.

13 Q. It was a part of it. But you wouldn't
14 have been in front of that judge had you not been
15 committing the crimes; right?

16 A. Correct.

17 Q. And so the judge had the ability to send
18 you to the D home, or probably back in that day,
19 maybe for YDDC; right?

20 A. Correct.

21 Q. Or to Springer, the boys school; right?

22 A. Yes.

23 Q. Or just put you on probation. And you had
24 probably already at that point been on probation,
25 hadn't you?

1 A. Yes.

2 Q. How many times?

3 A. I think once.

4 Q. Just once?

5 A. I can't recall, but I'm pretty sure just
6 one time.

7 Q. I can go look it up.

8 A. I can't recall, but if you want to look it
9 up, go ahead.

10 Q. Okay. So of the options, going to Sequoia
11 isn't all bad; right? It's pretty much a group
12 home?

13 A. It's a locked facility.

14 Q. It's a locked facility?

15 A. It's crazy. It's not being -- it's a
16 psych ward.

17 Q. It's better than Springer, though; right?

18 A. I've never been to Springer, so I can't
19 compare it.

20 Q. You've been in the D home?

21 A. I've been in the D home.

22 Q. Better than the D home?

23 A. It had some better -- better stuff to it.
24 Better food.

25 Q. And there, the people who are working at

1 Sequoia, they're probably nicer than the COs; right?

2 A. Yes. There I got treatment. I would do
3 counseling. They would do groups. They would
4 interact with us. I wasn't just left alone in a
5 cell just to -- just to -- they were there trying to
6 rehabilitate us. I took medication.

7 Q. And you were only there for, like, 90
8 days?

9 A. No.

10 Q. Eight months?

11 A. About eight months. Maybe a little bit
12 longer. I'm not too sure.

13 Q. I'd remember the 90 days one place, eight
14 months someplace else.

15 A. No, I was there longer.

16 Q. So you were in Sequoia for eight months,
17 and when you got out, you had a treatment plan;
18 right?

19 A. Correct.

20 Q. You were supposed to go do some outpatient
21 treatment. And you only did that for, like, a
22 month, and then you said, "I'm out of here," and you
23 stopped the treatment; right?

24 A. Correct.

25 Q. So that tells me that things weren't all

1 that bad for you. You're at Sequoia for eight
2 months. It's better than being at Springer for
3 eight months or the D home for eight months, or YDDC
4 for eight months. You're at a treatment facility.
5 You have good food. You have nice people treating
6 you. Better than the COs that you deal with every
7 day in prison; right?

8 A. Correct.

9 Q. Then you get out of there and they say:
10 "Okay, here we go. I'm going to set you up with
11 counseling, you go do this, we're going to take care
12 of all of these issues that you say you have."

13 And after a month you say, "I'm out of
14 here," and you don't do it anymore. So that tells
15 me that you really didn't have those problems, or
16 they fixed you; one or the other; right?

17 A. No.

18 Q. No? You just chose not to?

19 A. I was young, and -- I was young and
20 rebellious, and I just -- I had hatred and
21 frustration, and I didn't want to do good.

22 Q. Okay. And so you got out and you
23 continued to -- with your criminal activity; right?

24 A. Yes.

25 Q. And eventually you get locked up again. A

1 number of times; right? And by the time you're 16
2 and a half years old, the judge -- and I don't
3 remember who the judge was. Was it --

4 A. Blackmer.

5 Q. Judge Blackmer. Judge Blackmer sentenced
6 you as an adult. He found that you were not
7 amenable to treatment as a juvenile; right?

8 A. Correct.

9 Q. And you were 16 and a half, 17 years old
10 when you hit BCDC, downtown Albuquerque?

11 A. Yes.

12 Q. You never got your GED; right?

13 A. No.

14 Q. Did people try to help you get it?

15 A. Yes.

16 Q. You didn't want to do it; right?

17 A. I was about to finish my math test in
18 Las Cruces. I passed every other test, and I was
19 going to take the test the week after the 2001
20 murders. And I would have passed it and I would
21 have had my GED, but all this happened, and I didn't
22 get it.

23 Q. So back to the La Buena Vida in Santa Fe,
24 you said that was like a group home; right?

25 A. Yes, like -- I guess, like a group home.

1 I know it was through the State, and they would send
2 kids through the State there.

3 Q. But it wasn't a lockdown facility?

4 A. No.

5 Q. So you could come and go, if you wanted.
6 If you didn't want to stay, you could walk away?

7 A. Yes.

8 Q. That was not in any way a psychiatric
9 hospitalization, was it?

10 A. They would do groups, a lot of groups.
11 There was kids on medication, and it wasn't a
12 psychiatric center, but they would do a lot of
13 counseling.

14 Q. It was a group home that offered
15 counseling; right?

16 A. Yes.

17 Q. But it wasn't a psychiatric hospital?

18 A. No.

19 Q. But you told Dr. Johnson in Los Angeles
20 that it was a psychiatric hospital; right?

21 A. I can't recall that, but I've been to
22 other -- I've been to Anna Kaseman. Maybe -- she
23 was the one that wrote the report so...

24 Q. We'll go there. But she got the
25 information from you that you said that your last

1 psychiatric hospitalization was at La Buena Vida
2 before he went to prison around age 14. Where is
3 she going to learn that, if she doesn't learn it
4 from you?

5 A. I can't recall. Maybe I got mixed up with
6 the questions.

7 Q. Or you exaggerated?

8 A. Maybe I exaggerated a little.

9 Q. Or you just outright lied. Because you
10 wanted to convince her that you were not competent
11 to stand trial. You wanted her to think that you
12 didn't know who your lawyer was; right? You have a
13 lawyer, don't you?

14 A. At that time, I didn't have a lawyer.

15 Q. No, no, no, no. I'm sorry. At the time
16 you're in Los Angeles with Dr. Johnson. You had a
17 lawyer; right?

18 A. I was assigned to a lawyer midway of my
19 stay. I went through three different lawyers
20 already. I went through the death penalty lawyer, I
21 went through the first one -- I don't know who he
22 was. I had Robert Gorence. And my last lawyer is
23 Doug Couleur. When I left Otero County, I had no
24 lawyer. They just pulled him off the case due to
25 conflict of an interest.

1 Q. And that was Mr. Gorence?

2 A. Yes, Robert.

3 Q. And Mr. Couleur was appointed to represent
4 you?

5 A. At that point, it was up in the air, but
6 he eventually got appointed to me, and I found out
7 maybe -- I don't know the exact day; maybe two to
8 three weeks before I left California, that there was
9 another lawyer appointed to me.

10 Q. And during your conversations with
11 Dr. Johnson, you told her that Nicole was your
12 lawyer. You wanted her to believe that you didn't
13 even know that you had a lawyer; you wanted her to
14 believe that you didn't even know that you needed a
15 lawyer, but your lawyer was Nicole, your wife.
16 That's what you told her; right?

17 A. I told her that because she was doing all
18 the communications for me.

19 Q. Okay.

20 A. She was talking to my lawyer, relaying
21 messages, and she was feeding me all the
22 information.

23 Q. Who was she talking to? Was she talking
24 to Mr. Couleur?

25 A. She was talking to all the other lawyers,

1 and she eventually made contact with Mr. Couleur.

2 Q. But she's not a lawyer, is she?

3 A. Not a certified lawyer.

4 Q. Did she go to law school?

5 A. No.

6 Q. What level of education does Nicole have?

7 A. She has her high school diploma.

8 Q. A high school diploma, and you're telling
9 me that she's not a certified lawyer? So you're
10 exaggerating her qualifications to me here in this
11 courtroom in front of this jury?

12 A. No. In prison you have all kinds of
13 jailhouse lawyers who've never gone to school in
14 their life, but they read up, get a little knowledge
15 in the law library, and they're jailhouse lawyers.
16 She has somewhat of a knowledge of the law.

17 Q. Okay. And you do, too, don't you?

18 A. Yes.

19 Q. I mean, you've been through the system
20 since you were 12, 14 years old; right?

21 A. Yes.

22 Q. But you told Dr. Johnson that you had no
23 clue about what was going on. You wanted to make
24 her think that you didn't know anything other than
25 chickens; right?

1 A. Yes, I have a lot of them.

2 Q. Tell me about your chickens.

3 A. I have a lot of chickens.

4 Q. You have a lot of chickens?

5 A. Yes.

6 Q. And you spent a lot of time talking to
7 Dr. Johnson about chickens rather than court
8 proceedings; right?

9 A. Yes. The reason why about the court
10 proceeding is, I had had bad experiences with
11 lawyers, bad experiences with judges, and bad
12 experiences with district attorneys, and at that
13 point, I didn't know who to trust. I've seen so
14 much crooked stuff in the system that I wasn't
15 understanding. I don't -- I was at that point where
16 I didn't understand -- I know what they're supposed
17 to do and I know that they've had problems, I've had
18 problems. So I wasn't trusting the system. So I
19 would say I didn't know what they were doing. I
20 didn't understand it.

21 Q. But that's not why you were doing it. You
22 were doing it because you wanted to avoid
23 responsibility; right?

24 A. A little of both. I fully was feeling
25 that; I don't trust them and I don't know what they

1 were doing, because of all the crookedness I seen.
2 And maybe instead of going to prison, maybe I was
3 told I could go to a hospital and get treatment or
4 get help and go to a hospital setting if they find
5 me incompetent.

6 Q. So it was your plan to be found
7 incompetent; right?

8 A. It wouldn't hurt.

9 Q. You were incarcerated with a guy named
10 Richard Gallegos, weren't you?

11 A. Yes.

12 Q. You asked him if you should act crazy on
13 the telephone with your wife, so that people would
14 think you're crazy; right? Do you remember having
15 that conversation with him?

16 A. Never.

17 Q. So if an FBI agent puts it in a 302 that
18 that conversation occurred, it's probably a lie;
19 right?

20 THE COURT: Let's let the jury make that.
21 You can ask if it was inaccurate or not.

22 MR. COOPER: Okay.

23 A. I have never spoken about it to no one.
24 He was 10 years old or 15 years old when this crime
25 happened. I know. I've been in the system long

1 enough to know that the phones record.

2 BY MR. COOPER:

3 Q. But you had a conversation with Richard
4 Garcia while you two were both incarcerated as a
5 result of this case.

6 A. Now, it's Richard Garcia or --

7 Q. Gallegos, I'm sorry. Gallegos.

8 A. No.

9 Q. No. Okay. Isn't it --

10 MR. SINDEL: Excuse me, Your Honor. May
11 we have some clarification that Richard Gallegos is
12 in no way related to Andrew Gallegos and Joe
13 Gallegos?

14 THE COURT: Do you want to clarify that?

15 MR. COOPER: I'd be happy to, Your Honor.

16 BY MR. COOPER:

17 Q. The Richard Gallegos that we're speaking
18 of is not the Richard Gallegos from Valencia County,
19 is he? He's not related to Joe and Andrew?

20 A. No.

21 Q. Okay.

22 MR. SINDEL: Thank you.

23 MR. COOPER: You're welcome.

24 BY MR. COOPER:

25 Q. So you told Dr. Johnson that you saw

1 things, that you would see shadows and smoke going
2 along the walls and you would see those things at
3 night. But sometimes you just see spots in the
4 vision during the day. You have those visions two
5 to three times a week. You told her that; right?

6 A. Correct.

7 Q. That's a lie.

8 A. It wasn't a lie.

9 Q. It wasn't a lie? You see shadows and
10 smoke going along the walls?

11 A. When I got arrested, I was on methadone,
12 and I was on it for a long period of time. I was
13 staying clean, away from heroin, and I was doing
14 counseling, whatever. But when I got arrested and
15 you come to the federal system, you're not allowed
16 to get your medicine. And when you have
17 withdrawals, it's not like heroin. You could kick
18 heroin in three days. Methadone, it could take up
19 to a year, depending on how high of a dose you're
20 on. And when you quit cold turkey, you will have --
21 you'll see things, you'll see spots. You won't
22 sleep. I didn't sleep for months. I would take cat
23 naps for five minutes, ten minutes. And being up
24 that long, yeah, I seen -- I was seeing stuff at the
25 corner of my eye. And once I was kicked and free

1 from it, I've been doing good.

2 Q. And you stopped seeing that stuff; right?

3 A. Right.

4 Q. But you led her to believe that you
5 were -- at that time, while you were in Los Angeles,
6 while you were being interviewed with her, you led
7 her to believe that you were having nights where you
8 would see the shadows and smoke going along the
9 walls, and you'd only see things at night. You led
10 her to believe that. But that's something that
11 really happened a long time ago; right?

12 A. No. I was still kicking methadone.

13 Q. You were still kicking in April, May, and
14 June of 2017?

15 A. Oh, definitely.

16 Q. And when did you get arrested?

17 A. December 3rd, 2015.

18 Q. And it took you how long to kick it?

19 A. It took me eight, nine months. It takes a
20 long time. Have you ever been on methadone?

21 Q. I can't say that I have.

22 A. Well, I have.

23 Q. So you were on it at the time you were
24 arrested?

25 A. Correct.

1 Q. And then you kicked it within eight or
2 nine months?

3 A. Cold turkey.

4 Q. While you were there, you told Dr. Johnson
5 that you could not read; correct?

6 A. Correct.

7 Q. You can read, though, can't you?

8 A. I could read. I have problems with big
9 words, and you know, some pronunciations, but I
10 could read, for the most part.

11 Q. Okay, and during this entire period of
12 time, you had a tablet; right? Just like this
13 computer that Mr. Castle has, about that big?

14 A. I sure do.

15 Q. And it had, I think, at this point there's
16 70-thousand-some-odd documents on that tablet and
17 there's I don't know how many hours because I
18 haven't listened to them all, but hours and hours
19 and hours of audio files on there; right?

20 A. Correct.

21 Q. And all day long, if you want, you can sit
22 there and read through your discovery. And
23 discovery would include reports that I'm referring
24 to. This one happens to be the report from
25 Dr. Johnson. But you have access to that tablet,

1 and I don't remember when everybody got their
2 tablets, but you've had them for quite some time;
3 right?

4 A. Oh, yes. On the tablet, there is a place
5 where you go and it reads for you. You don't have
6 to -- it will read the statements for you, if you
7 don't know how to read.

8 Q. Sometimes you read and sometimes you use
9 that function?

10 A. Yeah, there's things that I read, and I
11 could read books that are not, you know, big books.
12 I read small -- I learned to read by the Bible,
13 reading the Bible.

14 Q. Good. So when you tell her that you can't
15 read, that's a lie.

16 A. It's an exaggeration, exaggerating. I
17 could read, but I exaggerated a little.

18 Q. And you exaggerated because you wanted her
19 to write a report that would pull the wool over his
20 eyes; right?

21 A. It may benefit me. I could maybe go into
22 a hospital.

23 Q. And the benefit of you going to the
24 hospital is not as great as the benefit to you of
25 going home; right?

1 A. Getting counseling and getting help, and
2 you know, dealing with some of my problems is a
3 benefit.

4 Q. Sure, it's a benefit. Going home is a
5 benefit, too, because if you go home, you can get
6 counseling and deal with your problems; right?

7 A. Yeah.

8 Q. And you can be with your wife.

9 And we didn't listen to the rest of that
10 conversation, but Rose and Frank are already
11 planning to take you on a trip; right?

12 A. They always tell me: "When you get out,
13 we're going all over the world." They always tell
14 me.

15 Q. So they're expecting you to come home
16 soon.

17 A. They're trying to give me hope and give me
18 confidence and keep my spirits up.

19 Q. You're lucky to have them; right?

20 A. I'm lucky to have them.

21 Q. So when you were interviewing with
22 Dr. Johnson, you would tell her that you had a
23 number of difficulties, that you had all kinds of
24 problems. And then you would -- there were times
25 when you would slow down your speech, and you

1 wouldn't talk to her like you're talking to me
2 today; right?

3 A. There was times where I shut down by the
4 way things were going, depending on how she was
5 talking, and what was going on in the conversation.

6 Q. Okay. But sometimes you would
7 purposefully slow down your speech and talk, like,
8 as if you were really kind of dumb; right?

9 A. There's times where I have to sit and
10 think about the question she was asking me, and it
11 sometimes would take a minute for me to answer.

12 Q. But you would slow things down, talking
13 with her, and it would be a lot slower than when
14 you're talking on the phone to Nicole, telling her
15 to, "Call my lawyer and tell him to do this," or,
16 "Where -- is my tablet coming back," or whatever it
17 is. You were able to talk regularly to Nicole, but
18 you would talk real slow to Dr. Johnson, right, and
19 that was part of your plan, part of the scheme to be
20 found incompetent; correct?

21 A. Not really. I've been married to my wife
22 for now going on 13 years, and we're -- we have that
23 bond where I can communicate with her. And I was
24 able to communicate with her, communicate with my
25 family.

1 Q. I've never met you, have I?

2 A. No.

3 Q. You're able to communicate with me, and we
4 don't have any bond, do we?

5 A. No, but I've been communicating with a lot
6 of people these last two years.

7 Q. So before you went to see Dr. Johnson, are
8 you telling these people on the jury that you were
9 unable to communicate with people?

10 A. I was in shock. I was just, like, a
11 nervous wreck of just the whole situation of being
12 charged, being involved. I didn't really fully
13 understand the RICO and the VICAR. I didn't want to
14 believe it. And I was just feeling disorientated of
15 the whole situation. And I was having problems
16 dealing and talking with people, and especially
17 people that I didn't know. And that's the way it
18 was.

19 Q. You told Dr. Johnson that you couldn't
20 write, also. Not only that you couldn't read, but
21 you couldn't write; right?

22 A. Right.

23 Q. That's a lie; right?

24 A. No.

25 Q. Not a lie. Can you write?

1 A. Oh, I could write, but not -- I have
2 problems spelling, punctuations, and a lot of -- I
3 have problems. I could write a basic --

4 Q. Sure.

5 A. -- basic letter, with words that we use
6 every day.

7 Q. In fact, she saw you sitting on the
8 computer at the facility in Los Angeles sending
9 emails. And you did that -- you know, if you can't
10 write, how can you do that?

11 A. I had help.

12 Q. Not always.

13 A. I was showed how to use the computer. And
14 I typed basic text, maybe a few sentences, telling
15 my wife that I love her and I can't call on the
16 phone, I ran out of time. That's it. That was
17 basic.

18 Q. But that's inconsistent with what you're
19 telling her, that you can't read and write; right?

20 A. Yeah. I can't write a book or nothing.

21 Q. Me neither. But that's -- just because we
22 can't write a book doesn't mean we can't write, does
23 it?

24 A. No.

25 Q. She wasn't asking you, "Hey, dude, can you

1 write a book?" That wasn't how it was going, was
2 it?

3 A. She just was asking me if I could read and
4 write and I'm like, "No, not too good. A little
5 bit."

6 Q. You never said, "Not too good." You said
7 "No"?

8 A. No.

9 Q. And you tried to appear to be less
10 knowledgeable about the legal process and court
11 proceedings than you actually were; right?

12 A. Yes.

13 Q. But when you'd get on the phone with
14 Nicole, you would talk about the legal process and
15 legal proceedings; right?

16 A. Yes.

17 Q. And those phone calls -- somebody was
18 listening to them; right?

19 A. Yes.

20 Q. So every time you would talk to Dr.
21 Johnson, you would appear to be less knowledgeable
22 and more confused about legal proceedings than when
23 you talked to even her staff and other people in the
24 facility; right?

25 A. Yes. After a few discussions with her, I

1 basically didn't want to even deal with her. I
2 basically shut down.

3 Q. At some point you learned that the phone
4 calls were being monitored; right?

5 A. I know that every time you use the phone,
6 it's monitored.

7 Q. And at some point you decided, hey, we're
8 not going to talk about certain topics, certain
9 issues; right? With Nicole?

10 A. We always say that.

11 Q. Okay. Your testing -- on one test you
12 told her that you didn't know where to write your
13 name; right?

14 A. I can't recall.

15 Q. Would it surprise you if she said that,
16 "For example, on one test he indicated he did not
17 know where to write his name, but he did not express
18 confusion about where to mark his answers"?

19 A. At this point nothing surprises me with
20 what she's going to say.

21 Q. Okay. And you were superficially
22 cooperative with her on all testing procedures;
23 right?

24 A. Yes. I didn't want to be aggressive. I
25 didn't want to be disrespectful or any way that, you

1 know, they can use against me. So I would sit down
2 and go through the tests with her.

3 Q. But you had a real serious lack of
4 motivation when you were doing the test; right?

5 A. Yes, real lack of motivation.

6 Q. Oftentimes, when you were taking a
7 particular test, you had answers that got in -- that
8 were so bad that even if somebody, some random
9 fourth grader, were to take the test, he'd have
10 better scores than you; right?

11 A. I may have.

12 Q. Yeah, and you did that on purpose because
13 you wanted to appear to be incompetent. You wanted
14 to lie to her, not perform adequately, so that your
15 test scores would be a lot lower, and then she'd
16 have to say, "Well, Judge, he's not competent";
17 right?

18 A. Not really. At one point, I just shut
19 down, and just yes, no, no, yes, and that was that.
20 I just wanted to get through with the test and get
21 away from her and come back home and deal with
22 whatever I've got to deal with.

23 Q. On almost every test she said that "based
24 on these observations, it's presumed that the
25 current results may underestimate his current

1 functioning due to his behavior, indicative of low
2 effort."

3 MR. CASTELLANO: Object to hearsay at this
4 point, Your Honor.

5 THE COURT: Well, you can't just read out
6 of the report. Sustained.

7 BY MR. COOPER:

8 Q. So your effort and motivation wasn't very
9 good, and as a result, you had test scores that were
10 a lot lower than they otherwise should have been;
11 right?

12 A. Correct.

13 Q. And there were certain evaluations that
14 were conducted that showed that you were
15 exaggerating or feigning symptoms of mental illness;
16 right?

17 A. I'm not for sure, but maybe there was.

18 Q. It's likely. I mean, just given how you
19 were performing and given your plan and your scheme
20 to do this, to do what you were doing, it's likely
21 that the results would have shown exaggerating or
22 feigning symptoms of mental illness, so you were
23 faking?

24 A. I just shut down. I didn't want to -- it
25 didn't matter at that point what happened.

1 Q. So you don't have -- you don't have an
2 objection to her finding that you were malingering,
3 do you?

4 A. Somewhat, I have an objection.

5 Q. On what?

6 A. Some of the questions and testings, I may
7 have malingered. As far as my background, my
8 history, my family, the things I've been through
9 since I was a child, there's no exaggeration about
10 that. It's there, it's documented. There's family
11 members that will testify, you know, that things
12 really happened and I've been through a lot of
13 stuff.

14 Q. But you grossly and falsely exaggerated
15 your mental health condition in order to evade
16 criminal prosecution; right?

17 A. In some ways, yeah, I did. And in some
18 ways I have problems. I do have PTS -- I'm
19 paranoid. I'm paranoid with people. I get anxiety.
20 It's hard for me to -- it's hard for me to do a lot
21 of stuff. And I exaggerated on some of them.

22 Q. But then when you would talk to your wife,
23 you'd exhibit a much higher level of functioning,
24 wouldn't you?

25 A. Possibly.

1 Q. In fact, you continued your scheme to try
2 to show that you were incompetent even after you
3 came back from Los Angeles, didn't you?

4 A. I don't know exactly what you're talking
5 about.

6 Q. So do you remember having a conversation
7 with your wife where you were talking about you
8 could only have four people signed up to take phone
9 calls from or visits from or visits, and you said,
10 "Oh, I know how I'm going to do it. I'm going to
11 tell them that I need eight people because then I
12 can -- I'll tell them it's for my mental health."
13 Do you remember that?

14 A. I don't know exactly what you're talking
15 about, about that part. If you could be more, you
16 know, detailed about it, like, so I can answer the
17 question.

18 Q. I'd be happy to play the phone call for
19 you if you'd like.

20 A. It don't matter.

21 Q. It don't matter?

22 MR. COOPER: It is BX4.

23 (Tape played.)

24 Q. I'm going to stop it there and go to the
25 pertinent part. But that's you and Bubba; right?

1 A. That's Mama.

2 Q. Oh, Mama.

3 THE COURT: Mr. Cooper, I'm wondering if
4 we ought to pick this up in the morning, if it's
5 going to take a little bit. Is that all right?

6 MR. COOPER: Sure. I'd be happy to,
7 Judge. Thank you.

8 THE COURT: All right. We'll be in recess
9 till 8:30 tomorrow. Thank you for all your hard
10 work. I appreciate the way you're going about your
11 task. Y'all have a good evening.

12 (The jury left the courtroom.)

13 THE COURT: Let me give y'all a homework
14 assignment with a due date of the close of business
15 on Friday. We're going to have to start keeping
16 some lists for the jury instructions, and I've
17 started working on those. So by the end of Friday,
18 so we don't get behind and scramble at the end, each
19 side give me a list of witnesses that you want me to
20 tell the jury that they made prior inconsistent
21 statements before. So let's start doing it now.
22 And we'll just keep up with it.

23 MR. SINDEL: Easy. That's going to be
24 everybody.

25 THE COURT: Think about what you want me

1 to put in there. So give me the first list by the
2 end of business on Friday, and there will be other
3 ones, too. If we're going to use a drug addiction
4 instruction, I'll need a list of everybody that you
5 want me to list with drug addictions, end of
6 business.

7 All right. Y'all have a good evening.

8 MR. CASTLE: Your Honor, I'm wondering if
9 I can bring up one matter that affects me
10 personally. There is a witness tomorrow -- and I
11 think he's like the sixth witness, Robert Lovato,
12 whose only importance to my client is this murder of
13 Babalu. I'd like to brief it. I'm also trying to
14 get out of town. My father is in hospice. And I
15 thought I was going to be able to do that. But if
16 we're not going to be doing that, and I have to do a
17 cross-examination on Mr. Lovato, then I have to kind
18 of cancel those plans.

19 But I would ask, it's a new murder, that
20 the Government be required to present that later in
21 their presentation, if the Court is going to allow
22 that to even be presented. But I'd like to have the
23 opportunity to at least brief it. We got 212 pages
24 ten minutes ago on it, and none of it mentions my
25 client. Apparently, it's the DA's file. We have to

1 scramble to do that. And I'd just ask the Court,
2 it's kind of an accommodation of a legal argument,
3 but also personal.

4 THE COURT: Is there any way you can
5 accommodate Mr. Castle?

6 MS. ARMIJO: He's our next witness, and
7 we've had him here already for two days. If we
8 could have a moment, we'll get back to him and let
9 Mr. Castle know. We can try to figure it out.

10 THE COURT: Why don't y'all talk about it
11 and see if you can accommodate it. I think it's
12 more of an accommodation on a personal level.

13 I'm not inclined at the moment to keep it
14 out. So from a legal matter, it's not -- I think,
15 if an accommodation can be made, I think it's going
16 to be more on a personal level.

17 All right. Y'all have a good evening.

18

19

20 April 26, 2018

21 THE COURT: Good morning, everyone. It
22 looks like we've got all the defendants and a lawyer
23 for each defendant. Is there anything we need to
24 discuss before we bring the jury in? We do have all
25 the jurors here. They're ready to go.

1 Mr. Beck, anything from the Government?

2 MR. BECK: No, Your Honor.

3 THE COURT: How about the defendants?

4 Anything we need to discuss?

5 All right. On the jury instructions, I
6 did send some back to Albuquerque to be typed. I
7 didn't think they were far enough along. I think
8 what I may try to do is a little different in this
9 trial. Since we have so many lawyers and counsel
10 and parties, I may just file them. And that way,
11 you can look at them on CM/ECF when you want to.
12 And as we go along, I'll file the edits.

13 Ms. Bevel, if you want to go ahead and
14 line them up.

15 I'll file the edits, so if you don't want
16 to reread the whole thing, you can just see what I
17 read. So that's the reason you're getting
18 handwritten material, is to try to make it easier on
19 you; so every time you get a draft, you don't have
20 to read the whole thing. You can see the changes
21 from what I changed the night before or the day
22 before. So I hope that will be helpful. So if you
23 want to start making comments as soon as you want
24 to, I'll continue to work on them.

25 MS. HARBOUR-VALDEZ: Do you want us to

1 file it as proposed comments? How do you want to us
2 provide the comments to the Court?

3 THE COURT: However you'd like. If you
4 want to shoot me a letter or do a pleading, however
5 you want to do it. And so it's early, but I think
6 it would be better if I start working on them, and
7 I'll try to get those out to you, as much as time
8 permits.

9 I know that Ms. Bevel kind of talked to
10 both sides a little bit. If you had to tell me
11 where we are in this trial -- do you think we're on
12 time, a day behind, two days behind -- where would
13 you think we are, given your predictions of where we
14 would be?

15 MR. CASTELLANO: I can check with
16 Ms. Armijo. I'm guessing we're maybe a day or two
17 behind. But I think once we hit the Burns homicide,
18 we'll pick up speed. That involves just two of the
19 defendants. I think at that point we'll probably be
20 playing catch-up.

21 THE COURT: So you don't think you're more
22 than a day or two behind?

23 MS. ARMIJO: I don't, because I think
24 we're going to play catch-up. That being said, I
25 think we'll probably finish, not next week, but the

1 week after.

2 THE COURT: This is the Government
3 talking?

4 MS. ARMIJO: Just the Government talking.

5 THE COURT: So that puts the Government
6 sometime resting in the fifth week?

7 MS. ARMIJO: Correct. Correct. And then
8 I guess it's going to depend on how we do with the
9 Burns and the Gomez matters. But my understanding
10 in talking to counsel is that -- and we did -- we
11 did move Mr. Lovato, so we are going to be moving
12 into -- as soon as we're done with just a couple of
13 witnesses -- into the Burns-Gomez cases here
14 shortly, and I think that will -- and I'm meeting
15 with counsel this morning to go over photographs,
16 because I was working with the detective last night.
17 I think we're going to be able to get a lot of
18 stipulated things in so we won't have a lot -- it
19 would go much smoother.

20 THE COURT: Okay. I'll get the
21 defendants' input when we have a break. So y'all be
22 thinking of the same questions.

23 MR. CASTLE: I just wanted to say we
24 appreciate the Government's assistance.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Everyone be
2 seated. Look at that, we're all here early, ready
3 to go.

4 A JUROR: Oh, yeah.

5 THE COURT: Just overjoyed; right?

6 Well, I appreciate it. A lot of times
7 it's very hard to get this many people on time and
8 ready to go, and you, the jurors, have been
9 wonderful about it; and the attorneys and the
10 parties have been very great about it, too. So we
11 all appreciate it, especially the Court.

12 All right. We'll get Mr. Martinez in.

13 All right. Mr. Martinez, if you'll come
14 back up to the witness box. And I'll remind you
15 that you're still under oath.

16 All right. Mr. Cooper, if you wish to
17 resume your cross-examination of Mr. Martinez, you
18 may do so at this time.

19 MR. COOPER: Thank you, Your Honor.

20 EUGENE MICHAEL MARTINEZ,
21 after having been previously duly sworn under
22 oath, was questioned, and continued testified as
23 follows:

24 CONTINUED CROSS-EXAMINATION

25 BY MR. COOPER:

1 Q. Good morning, Mr. Martinez.

2 A. Good morning, sir.

3 Q. Excuse me. For some reason, I can't get
4 rid of this little cough that I have this morning.

5 I'd like, Mr. Martinez, to go over a
6 timeline with you. There are some very important
7 dates concerning all of the statements that you
8 gave, when you gave those statements, and how those
9 statements never implicated Mr. Garcia. And so the
10 first date is December 3, 2015. And that's the date
11 that you talked to the FBI agent; is that correct?

12 A. That's correct.

13 Q. For two hours?

14 A. Correct.

15 Q. And so December 3, 2015, you did not
16 implicate in any way, shape, or manner Billy Garcia,
17 did you?

18 A. No.

19 Q. The next event is: You had a competency
20 hearing on March 20 and 21 of 2017; right?

21 A. Yes. I wanted to say during that two-hour
22 conversation, there's a part in there where I said
23 Billy Garcia had -- was involved with that stuff. I
24 didn't say the murder. I didn't say exactly what it
25 was. But there was a point where you're -- towards

1 the ending where I did mention a little bit of --
2 that he may have been involved.

3 Q. But you didn't give any details; you
4 didn't say anything --

5 A. No.

6 Q. -- at all about that, did you?

7 A. No.

8 Q. Okay. So now, the next important date
9 would be March 20 and 21 of 2017; right?

10 A. Correct.

11 Q. And that's the date of your competency
12 hearing; correct?

13 A. Correct.

14 Q. So between December 3 of 2015 and March 20
15 and 21 of 2017, you never talked to anybody about
16 Billy Garcia; right?

17 A. Never.

18 Q. Then on March 23, after your competency
19 hearing -- and that's the competency hearing where
20 Frank Ortiz, your uncle, who was a longtime Bureau
21 of Alcohol, Tobacco, Firearms agent came to court to
22 testify on your behalf; correct?

23 A. Correct.

24 Q. And that's the same uncle who knows Randy
25 Castellano and who has worked with Randy for a long,

1 long time; correct?

2 A. Right.

3 Q. So he testified at that March 20, 2017,
4 competency hearing. On March 23, you and your
5 lawyer got a Kastigar letter, an invitation
6 basically to come cooperate with the Government;
7 right?

8 A. Correct.

9 Q. Three days after that competency hearing,
10 two days after that competency hearing. On March
11 23, you get that Kastigar letter, and you start the
12 negotiating with the Government about a plea and a
13 debrief; right?

14 A. Correct.

15 Q. The judge has already found that you
16 indeed are competent, despite everything that you
17 tried to say to Dr. Johnson in LA; right?

18 A. Correct.

19 Q. So during the period of time from March
20 23, 2017, to May 3 of 2017, you have discussions, I
21 presume, probably with your lawyer; right?

22 A. Right.

23 Q. You talk about the plea, you talk about
24 the fact that you have to give complete and
25 accurate, truthful information to the Government in

1 order to satisfy your obligations under the 5K
2 agreement that you're expecting to get from the
3 Government; right?

4 A. I did.

5 Q. And so you have those discussions, and you
6 know at that time, from the time you start
7 negotiating for this cooperation and negotiating to
8 get this plea -- you know that you've got to give
9 good and truthful information; right?

10 A. Yes.

11 Q. So the first debrief, the first time since
12 December 3 that you ever talked to the Government
13 was on May 3 of 2017. So May 3, 2017, you gave your
14 first debrief. You don't say a word about Billy
15 Garcia, do you?

16 A. No.

17 Q. Two days later -- and after that, you go
18 home to your -- you're staying at that point at the
19 Torrance County Detention Center in Estancia, New
20 Mexico; right?

21 A. Correct, living right next door to him.

22 Q. Okay, and in a pod with a lot of other
23 individuals who are --

24 A. Killers.

25 Q. Okay. And so are you; right? You're a

1 killer?

2 A. If I have to, I will.

3 Q. And you did?

4 A. If I'm put in a situation, I will.

5 Q. And you did, didn't you?

6 A. Correct.

7 Q. So you're a killer.

8 A. Correct.

9 Q. You're no better than anybody else that
10 you call a killer, are you?

11 A. No.

12 Q. Okay. So let's get back to the timeline
13 of these important dates. So you go back to
14 Torrance, after you debrief on May 3. On May 5,
15 it's now time for you to go to court and enter your
16 plea. So May 5, 2017, you enter your plea; right?

17 A. Yes.

18 Q. You then do another debrief -- and I think
19 yesterday you said it was about an hour. You do a
20 debrief with the FBI agents and the lawyers for the
21 Government. All three of those lawyers were at your
22 plea hearing, weren't they?

23 A. Correct.

24 Q. And so you meet with everybody, you talk
25 again. You don't talk about Billy Garcia, do you?

1 A. I don't.

2 Q. Not one word. So that was May 5th. Right
3 after you have the debrief, then you don't go back
4 for Torrance County Detention Center. You go to
5 Cibola County Detention Center; right?

6 A. Correct.

7 Q. So -- and when you go there, you're with a
8 bunch of killers, aren't you?

9 A. Here and there.

10 Q. Here and there?

11 A. Yeah.

12 Q. There are a bunch of killers, guys that
13 cooperated and are trying to get good deals so they
14 can go back out on the streets; right?

15 A. Correct.

16 Q. That's who you were housed with, killers;
17 right?

18 A. Correct.

19 Q. Just like you?

20 A. Correct.

21 Q. So you don't go back to the place where
22 Billy Garcia -- and at that time there were probably
23 a number of SNM members housed at Torrance, but you
24 don't go back there; right?

25 A. No.

1 Q. Now you're in a place with guys who have
2 all decided to do what's right and cooperate with
3 the Government; right?

4 A. Correct.

5 Q. They're in the same position that you're
6 in, trying to get a good deal, trying to make an
7 impact on these lawyers here so that they can write
8 a good letter and convince Judge Browning that
9 they're good people and they ought to be let out;
10 right?

11 A. Correct.

12 Q. So that's May 5th, 2017. On May 17, 2017,
13 that's when you go back to have your third debrief
14 with the Government; right?

15 A. Correct.

16 Q. Not a word is said about Billy Garcia;
17 right?

18 A. Hmm, correct. I know when I took my plea,
19 I mentioned when Billy Garcia pulled up in 2001 and
20 the murder happened. But I didn't give detailed --
21 that I actually spoke with him.

22 Q. Okay.

23 MR. COOPER: May I have a moment, Your
24 Honor?

25 THE COURT: You may.

1 BY MR. COOPER:

2 Q. Before that competency hearing, you denied
3 to Dr. Johnson and later to Dr. Westfried that you
4 were not guilty of anything; right?

5 A. Yes.

6 Q. You said you didn't do anything. You lied
7 to them, didn't you?

8 A. Yes.

9 Q. We're going to talk a little bit more
10 about your lies later on this morning.

11 A. All right.

12 Q. In your plea agreement -- I'm going to
13 pull up your plea agreement here in just a second.
14 Okay? We're going to talk about what you said in
15 that plea agreement. I'm going to pull up
16 Government's Exhibit 105, and that's a copy of your
17 plea agreement.

18 So you have page 3 in front of you at this
19 point in time. There is a place in your plea
20 agreement for you to give a factual basis as to why
21 you're entering the plea; right?

22 A. Correct.

23 Q. And you went over that plea agreement with
24 your lawyer before you signed it?

25 A. Yes.

1 Q. And you went into Court that day, and you
2 entered the plea. The judge asked you, first off,
3 to raise your hand, promise to tell the truth;
4 right?

5 A. Correct.

6 Q. And you did that. And it was Judge
7 Molzen; right?

8 Q. Yes.

9 Q. So Judge Molzen asked you to look at the
10 factual basis in that plea agreement and make sure
11 that everything in that plea agreement was true;
12 right?

13 A. Correct.

14 Q. Judge Molzen took your plea that day, and
15 when you gave your plea, you didn't say anything
16 about you ever going to talk to Billy Garcia to
17 confirm it; you never did anything about that sort
18 of stuff, did you?

19 A. I didn't say that part.

20 Q. Okay. You did say, however, that when
21 Billy came to Southern, things changed?

22 A. Immediately.

23 Q. That's what you said?

24 A. Yes.

25 Q. But you didn't give any details about what

1 he did or what he said or that he had any
2 participation in any of these killings, did you?

3 A. I was told just to give a brief statement
4 and do my plea.

5 Q. You were told not to tell the truth?

6 A. I just gave a statement that when he
7 pulled up, everything -- everything happened, things
8 changed. And that's what happened.

9 Q. Okay. So you make the statement.
10 December 3 you make a statement, May 3, May 5. May
11 5, during the plea hearing, none of those times do
12 you ever mention Billy. Again on May 17, the third
13 debrief, you don't give any details like you gave
14 here in court today or yesterday, did you?

15 A. No.

16 Q. The first time -- so let me back up. May
17 17 you had your third debrief. You don't talk about
18 Billy. On August 29, that was the day that you had
19 a phone call to Uncle Frank and Aunt Rose; right?

20 A. Correct.

21 Q. And in that phone call you talked about
22 how you were going to get time served, you were
23 going to hope that they kept their agreement. You
24 talked about those sorts of things. You talked to
25 Frank. How many other times did you talk to him?

1 A. Several times.

2 Q. Several times?

3 A. Several.

4 Q. Okay. And you know that Frank has worked
5 in the federal court system for a long, long time;
6 right?

7 A. Correct.

8 Q. And you know Frank knows what has to
9 happen in 5K situations; right?

10 A. I guess he knows. I'm not for sure. I
11 never asked him. But obviously, maybe he knows.

12 Q. You asked him for advice about this 5K and
13 whether or not the Government was going to do what
14 they promised you; right?

15 A. I did.

16 Q. So you wouldn't have asked him if you
17 didn't think that he had that sort of knowledge and
18 that sort of experience; right?

19 A. Right. I asked a lot of questions.

20 Q. Sure. I'm sure you did. So August 29,
21 you talked to Frank about that; you have a lot of
22 other conversations with Frank. Then on November 2
23 you have your fourth debrief, and in that debrief is
24 the first time that you ever talk about the details
25 about what happened and what you claimed Billy

1 Garcia's participation is; right?

2 A. Correct.

3 Q. But that's after all that other stuff
4 happened; correct?

5 A. Correct.

6 Q. Before we adjourned yesterday afternoon,
7 we had talked about your scheme to use your mental
8 health issues as a reason to get more phone calls.
9 And we were about ready to play a telephone
10 conversation between you and Nicole.

11 MR. COOPER: So what I would like to do,
12 Counsel, is play BX-4. This is a call that occurred
13 on July 20, 2017.

14 MR. CASTELLANO: Before they play the
15 exhibit, I'm wondering what this is impeaching. I
16 don't know that Mr. Martinez has denied anything
17 yet. He has no question pending.

18 THE COURT: Hold on.

19 MR. COOPER: Your Honor, yesterday
20 afternoon he had denied that he had a plan or a
21 scheme to use his mental health to get more
22 visitors. And it also goes to impeach the fact that
23 he had -- he was using his mental health issues to
24 try to convince the Court that he was incompetent.

25 THE COURT: I think I made a determination

1 that there was a statement that could be impeached.

2 You may play it.

3 MR. COOPER: Thank you.

4 (Tape played.)

5 BY MR. COOPER:

6 Q. I'm going to pause it for just a second.

7 Is that your voice?

8 A. That is my voice.

9 Q. And are you speaking to your wife, Nicole?

10 A. I'm speaking to my wife, Nicole.

11 (Tape played.)

12 Q. Thank you, Ms. Gilbert.

13 So you were using your mental health to
14 try to scam the people out at the facility; right?

15 A. No. You're allowed to have four people on
16 your visiting and you're allowed every week, weekly
17 in Sandoval County, to turn in the new visiting.
18 You could do this weekly, take people off and then
19 add people on. And it's -- you're allowed to do
20 that. If you check with Sandoval County, maybe you
21 would know.

22 Q. Maybe I would.

23 A. Maybe you do.

24 Q. But maybe what you were doing is trying to
25 use the mental health to get more than four. And

1 when Nicole heard you talking about using your
2 mental health, she shut you down, didn't she?

3 A. Correct. That has nothing to do with
4 turning in the new visiting request.

5 MR. COOPER: Okay. Ms. Gilbert, would you
6 go to -- actually, Your Honor, may we approach?

7 THE COURT: You may.

8 (The following proceedings were held at
9 the bench.)

10 MR. COOPER: Judge, I'm going to ask to
11 replay. Yesterday we didn't have one channel of the
12 speaker system, because everything is linked to all
13 of the different computers, and for some reason that
14 wouldn't play. We tried to use a computer. Today
15 we have speakers, and I would like to replay the
16 call that we played yesterday afternoon. We didn't
17 have the technology to actually do it correctly, and
18 so I'd like to redo that.

19 THE COURT: Do you have any problem with
20 that?

21 MR. CASTELLANO: I think that's
22 reasonable, Judge. I couldn't hear it.

23 THE COURT: I couldn't hear it, either.

24 MR. COOPER: I was told that a number of
25 the defendants in the back didn't hear it, so the

1 jury didn't.

2 MR. LAHANN: While we're up here, the
3 Government had admitted 24 and 25, which
4 Mr. Garza's -- and the nudie pictures you've
5 redacted. Can we have an unredacted copy admitted
6 into evidence? I think it's important for my cross.

7 MR. CASTELLANO: We probably can, Your
8 Honor. We can go back and look. It's on the video.

9 MR. LAHANN: It's on the video. It's just
10 easier to show the still photos.

11 MR. CASTELLANO: 24 and 25?

12 MR. LAHANN: Yes.

13 MR. CASTELLANO: We'll work on that. I
14 don't know how quickly we can get it done.

15 MR. LAHANN: We're working on it. Can
16 those be the official exhibits, then? Can they
17 replace --

18 MR. CASTELLANO: Why don't we call them
19 24A and 25A?

20 THE COURT: Is that all right? Any
21 objection? 24-A and 25-A will be admitted into
22 evidence.

23 (Defendants' Exhibits 24-A and 25-A
24 admitted.)

25 MR. COOPER: One final thing. I have two

1 more phone calls after this one that we're going to
2 play now, impeaching him with regard to credit time
3 served, and then I'm done with my phone calls.

4 THE COURT: Okay. We'll take them one at
5 a time.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: All right. Mr. Cooper.

9 BY MR. COOPER:

10 Q. Mr. Martinez, yesterday we made a phone
11 call, played the call of the August 29, 2017, call
12 that you placed to Rose and Frank Ortiz. And if
13 you'll remember, we didn't have -- one of the
14 channels on our computer wasn't working right, so it
15 didn't -- we weren't able to hear it. Then we tried
16 to do it with a computer and a number of people
17 couldn't hear it yet. So we're going to play it
18 again, but just to remind you, this is a phone call
19 between you -- that you placed to your Aunt Rose.
20 Uncle Frank got on the call, and this occurred on
21 August 29, 2017. And at that time you were -- where
22 were you? In Sandoval?

23 A. I can't recall.

24 Q. Okay. It doesn't matter, probably. But
25 we're going to play that call.

1 MR. COOPER: Counsel, again, that is BX-3.

2 (Tape played.)

3 Q. So Mr. Martinez, is that your voice on the
4 phone call?

5 A. Yes, sir.

6 Q. And it was also the voice of Frank Ortiz,
7 your uncle?

8 A. Yes, sir.

9 MR. COOPER: Ms. Gilbert, if you would go
10 to 12 minutes and 50 seconds.

11 (Tape played.)

12 Q. So you believe that you're going to get a
13 sentence of credit for time served?

14 A. I don't believe. But I hope. They read
15 out the plea to sign for life and there is a
16 possibility that they could write a letter for me
17 for the 5K1. And there's possibilities I could get
18 life. I could get zero to 20. I could get
19 probation, time served. There was all kinds of
20 possibilities and I'm just hoping for the best. I'm
21 trying to hope for the best and keep my spirits up,
22 and -- but no, they didn't promise me nothing. I
23 kept asking them, "Am I going to go home? Can I go
24 home?"

25 They said, "We can't do nothing. You have

1 to sign for life, and this is what it is, and it's
2 up to the judge." But I still have hope that God
3 will protect me.

4 Q. Okay. You say all those are
5 possibilities, but they're not very probable, are
6 they?

7 A. I don't know.

8 Q. You don't know. Do you think there is
9 any -- do you have any reason to believe that the
10 Government will not write the 5K motion for you?

11 A. I have doubts.

12 Q. You have doubts?

13 A. Yes.

14 Q. And what gives you those doubts?

15 A. Just years of being burned by people, by
16 family, bad experiences, anxiety and stress and
17 paranoia. And I always feel stuff, you know.

18 Q. Okay. So tell me about the first bad
19 experience that you have had with the Government
20 since you decided to cooperate.

21 A. I haven't had one yet.

22 Q. You haven't had one yet?

23 A. Yet.

24 Q. And you've been cooperating with them a
25 lot; right?

1 A. I just -- no, I just talked to them three
2 or four times, and then got briefed a little bit.
3 That's it.

4 Q. You didn't even have a bad experience with
5 the FBI agents when you talked to them the first day
6 that they arrested you; right?

7 A. Um --

8 Q. I mean, it wasn't a pleasant experience
9 being arrested. I get all that. But they didn't
10 treat you bad, did they?

11 A. They didn't physically abuse me. But they
12 tried to pin me down and questions and stuff and it
13 was a little aggravating.

14 Q. But never has, since you decided to
15 cooperate, has anybody working for the Government
16 led you to believe that they're going to burn you
17 and not file a motion for 5K; right?

18 A. They haven't yet.

19 Q. And you have Frank Ortiz on your side, a
20 former ATF agent who has worked for years and years
21 and years with Randy Castellano, has been in this
22 courtroom, has talked about how he's going to help
23 you get this credit for time served sentence; right?
24 You've got him on your side?

25 A. He would speak for me and he spoke about

1 my childhood. But that's all up to the Government
2 and to the judge. He has no say.

3 Q. He has no say, but after he spoke at that
4 hearing, Randy Castellano had a lot of good things
5 to say about you; right?

6 A. I may have exaggerated. They were just
7 real surprised when he walked into the room and they
8 realized that he was a family member and he knew
9 them. And they were just surprised, a little
10 surprised, and I just got excited, and that's it.

11 Q. "Literally, they dropped and they looked
12 at me with like a sad -- not like a sad -- and then
13 afterwards they were, like, they said a lot of good
14 things. Castellano said a lot of good things. And
15 they -- yeah, they" --

16 You just said that right on that phone
17 call?

18 A. Yes.

19 Q. Those are your words?

20 A. He said, "Things will be all right." He
21 said, "Things will be all right. You've just got to
22 tell the truth and -- tell the truth."

23 And that made me feel good.

24 Q. Who said that?

25 A. Castellano.

1 Q. So based on that, do you have a reasonable
2 belief that they're not going to file a motion for
3 5K?

4 A. It's up in the air.

5 Q. Really?

6 A. If you complete and do everything you're
7 supposed to, they could file it, but they don't have
8 to file it.

9 Q. No, they don't. Do you think, given your
10 political pull, given the fact that you have
11 cooperated, the fact that you're sitting here today
12 testifying, do you think they're going to refuse to
13 file that 5K?

14 A. I hope not.

15 Q. Do you think they're going to?

16 A. I don't know.

17 Q. Do you have any reason to believe they
18 will not file it?

19 A. It's all up to them, whether they file it
20 or no. It says in black and white.

21 Q. I understand that. But that's a yes-or-no
22 question. Do you have any reasonable belief that
23 they will not -- or do you have any reason to
24 believe that they will not file the motion for 5K?

25 A. If I do what I'm supposed to do, and --

1 Q. That's not -- no, no, no, no, no, no, no.
2 Yes or no.

3 A. No.

4 Q. Yeah, you have no reason to believe that
5 they won't file it; right?

6 A. If I do what I'm supposed to do.

7 Q. Right. Next I would like to play Exhibit
8 BX-1. It a phone call that you placed to Nicole on
9 August 6, 2017.

10 (Tape played).

11 Q. So at the beginning of that, you said you
12 were going to get time served. When you're talking
13 to Nicole on the telephone, you told her, "I'm going
14 to get time served." Today you're telling the
15 ladies and gentlemen of the jury that you don't know
16 what you're getting, and you're hoping to get it,
17 but you're not certain you're going to get it; you
18 have no reason to believe you're going to get it,
19 because they have to file the motion and then it's
20 up to the judge. But when you're talking to her,
21 you're telling her, "Yeah, I'm going to get it."
22 And then you talk about what's going to happen after
23 you get it; right?

24 A. Correct.

25 Q. And what you were talking about is moving

1 to Florida, moving to Arizona, changing your
2 identity. The Government is going to help you move;
3 right?

4 A. Florida and Arizona is a prison where they
5 put us, and I'm talking about if I get time, they'll
6 put me somewhere where I'm not around or I'm safe --

7 Q. Okay.

8 A. -- doing prison time.

9 Q. All right. But the rest of that
10 conversation -- correct me if I'm wrong; I wasn't
11 part of that conversation. I listened to it.

12 A. Right.

13 Q. But "they might help me move." "They" is
14 a reference to the Government; right?

15 A. Yes.

16 Q. And that's what happens in the WITSEC
17 program, the witness security program?

18 A. I was told by inmates that are so-called
19 jailhouse lawyers or whatnot and just pass on
20 information, and if they say we could go to WITSEC,
21 they say they'll help us. Once we finish our time,
22 we can move somewhere. And if we did need help,
23 there is possible help. And I'm just trying to be
24 uplifting and not be down, and hope for the best.

25 Q. And you've also heard that not only from

1 the jailhouse lawyers, but you've heard that from
2 Government agents, haven't you?

3 A. Not really.

4 MR. COOPER: May I have a moment, Your
5 Honor?

6 THE COURT: You may.

7 BY MR. COOPER:

8 Q. So you know Agent Bryan Acee is; right?

9 A. Correct.

10 Q. He's not sitting here today, but he was
11 here yesterday for a period of time?

12 A. Correct.

13 Q. So if Bryan Acee wrote me a letter on
14 January 17, 2018, telling me that he advised you
15 that you could be recommended to the federal witness
16 security program if you became a witness, Special
17 Agent also explained the different phases of the
18 witness security program to you, is he lying?

19 A. He may have explained it.

20 THE COURT: Again, let's not use that
21 language. That's for the jury to make a
22 determination. So Mr. Acee, if he is on the stand,
23 the jury can make that determination. But you can
24 ask him if that is his recollection, if it's
25 different from Mr. Acee's or something like that.

1 MR. COOPER: Thank you, Judge.

2 THE COURT: Mr. Cooper.

3 BY MR. COOPER:

4 Q. So Bryan Acee talked to you about the
5 witness security program?

6 A. A little bit.

7 Q. He also told you that they would meet with
8 your family to discuss the security issues, and he
9 has done that, too, hasn't he?

10 A. Yes, he did that.

11 Q. So part of the witness security program,
12 the WITSEC program, is that they will help you
13 change your name; and you talked about that with
14 Nicole in that conversation, didn't you?

15 A. I did.

16 Q. And then you decided, I don't know that I
17 want -- I don't want to change my name. You want to
18 keep your name; right?

19 A. I would like to keep my name.

20 Q. Okay. But you'd like to move, you'd like
21 to have them help you get a job; right?

22 A. Definitely.

23 Q. You would -- you're going to ask them for
24 everything you can get; right?

25 A. Whatever benefits I can get, I would like.

1 Q. And they'll even give you cash to help you
2 move; right?

3 A. I was told by other inmates, so-called
4 jailhouse lawyers, that other cooperators have
5 received money to relocate and get on their feet,
6 but the Government has never told me about that.

7 Q. Okay. Other cooperators in this case?

8 A. Yes.

9 Q. I'd like to play one more call,
10 Mr. Martinez.

11 And this is, Counsel, BX-2.

12 (Tape played.)

13 Q. So Mr. Martinez, that's your voice?

14 A. Correct, mine and my mom's.

15 Q. You and your mother?

16 A. Yes.

17 (Tape played.)

18 Q. So Mr. Martinez, you say, "They say it's
19 possible I could get time served." Who is "they"?
20 That's the Government, isn't it?

21 A. They said there's all kinds of
22 possibilities. I could get life. They could decide
23 they could write a letter for me. I could get a
24 20-year cap. I could get anywhere -- it's all up to
25 the judge.

1 Q. But when you said in that phone
2 conversation that "They said it's possible that I
3 get time served," who is "they"?

4 A. Inmates have told me. The Government read
5 out the plea. It's right there that there's
6 possibilities.

7 Q. You told your mother, "I may be on
8 probation for a while."

9 And your mother responded, "That's what
10 Frank said."

11 Did you hear that the same way I heard it?

12 A. Yeah. They're being hopeful and trying to
13 keep my spirits and my hope up.

14 Q. And Frank -- that's the same Frank, your
15 uncle, the ATF agent?

16 A. Correct.

17 Q. You were told, probably right before you
18 came in to the courtroom yesterday, to take the
19 stand and tell the truth; correct?

20 A. Correct.

21 Q. That's hard for you to do, isn't it?

22 A. No.

23 Q. No. On direct examination -- page 231,
24 Counsel -- on direct examination, you were asked the
25 question: "What was the purpose of going to Sequoia

1 as a teenager?"

2 And you answered, "My dad and brother got
3 shot. And I was in the backseat. And I witnessed
4 it. And I went in shock. I couldn't eat, sleep.
5 They took me from my family, CYDF (sic). They put
6 me in the juvenile system. And I just had like a
7 nervous breakdown. I was 11 years old, witnessing
8 my dad and brother get thrown there on the floor,
9 dead. And the guy almost shot me, too. The gun
10 jammed. I was just in shock. And I went to Sequoia
11 for long-term."

12 You tried to elicit the sympathy of the
13 ladies and gentlemen of the jury by claiming that
14 you were in the backseat and you almost got killed
15 while witnessing your father and your brother get
16 murdered, didn't you?

17 A. I may have said that.

18 Q. Pardon me?

19 A. I can't recall, but obviously I said that.

20 Q. That wasn't the truth, was it?

21 A. No.

22 Q. Absolutely not. The farthest thing from
23 the truth.

24 A. No.

25 Q. You weren't anywhere near Sal's liquor

1 store, were you?

2 A. No, but I seen them on the news, covered,
3 shot up.

4 Q. Covered?

5 A. And it still took effect on me.

6 Q. You have never, ever seen bodies on the
7 news. News stations don't show bodies on the news,
8 do they? They always have them covered.

9 A. Because it was covered, they were in the
10 body bag, and I knew my dad and brother were
11 underneath that cover.

12 Q. But you weren't in the backseat, were you?

13 A. No.

14 Q. The gun didn't jam?

15 A. No.

16 Q. You didn't almost get killed.

17 A. No.

18 Q. But you lied to these ladies and gentlemen
19 of the jury; right?

20 A. I said that.

21 Q. You said that?

22 A. I remember talking about when I spoke with
23 the lady in California about it, that I had told her
24 that, and that we were speaking about that.

25 Q. And you told her the same thing; right?

1 A. I told her that.

2 Q. And so you lied to the lady in California,
3 you lied to Westfried, you lied to these people on
4 the jury?

5 A. Correct.

6 Q. You're probably going to say, yeah, but I
7 didn't lie about anything else. How can we believe
8 you?

9 A. Well, it's up to the jurors.

10 Q. I understand it is. How can they believe
11 you?

12 A. By evidence and testimony.

13 Q. The jury has to listen to everything you
14 say and listen to how you say it and why you say it;
15 right?

16 A. Correct.

17 MR. COOPER: Thank you, Mr. Martinez. I
18 don't have any further questions.

19 THE COURT: Thank you, Mr. Cooper.

20 THE WITNESS: Thank you.

21 THE COURT: Who else has
22 cross-examination? Mr. Lahann?

23 MR. LAHANN: May I approach the easel,
24 Your Honor?

25 THE COURT: You may.

1 CROSS-EXAMINATION

2 BY MR. LAHANN:

3 Q. Good morning, Mr. Martinez.

4 A. Good morning.

5 Q. My name is Jeff Lahann, and I'm sure
6 you've guessed I represent Allen Patterson.

7 A. Yes.

8 Q. Do you remember Allen?

9 A. Yes.

10 Q. You said yesterday that Allen was pretty
11 much a loner in that cell block; isn't that true?

12 A. Correct.

13 Q. He sat in his room, he read his books, he
14 really didn't get involved in everything else going
15 on in the pod?

16 A. Correct.

17 Q. As a matter of fact, when there was
18 trouble, the night before or the night that
19 Mr. Garza got killed, it was Allen who came down and
20 defused the situation so that people weren't
21 bickering and arguing; isn't that right?

22 A. Correct.

23 Q. And then after everybody gets arrested and
24 you guys end up in Estancia, whenever you would talk
25 to some of the other folks about your case, their

1 case, what the evidence is, Allen would always walk
2 away from those conversations; isn't that right?

3 A. Correct.

4 Q. He never tried to come up with a story or
5 anything like that. He would just walk away from
6 you guys?

7 A. Yes.

8 Q. He was a loaner?

9 A. Yes.

10 Q. He kept to himself?

11 A. Yes.

12 Q. You didn't understand how he even got
13 involved in all this, did you?

14 A. I didn't.

15 Q. You stated that you can read now. Can you
16 please read what I wrote on the easel?

17 A. Los Carnales.

18 Q. Tell me what Los Carnales means to you.

19 A. It's a prison gang and a street gang.

20 Q. It's a street gang and a prison gang?

21 A. Yes.

22 Q. If we can pull up Government's Exhibit 75
23 which has been admitted. Do you recognize,
24 Mr. Martinez, what's depicted in that exhibit?

25 A. I do.

1 Q. What is it?

2 A. That's the O-1 unit.

3 Q. Is that where you lived?

4 A. Yep.

5 Q. Okay. And if I said that Mr. Garza lived
6 in the downstairs cell where I just made that mark,
7 is that about right?

8 A. You're correct.

9 Q. And if I make a mark up here, is that
10 where Allen lived?

11 A. Correct.

12 Q. And he lived upstairs; isn't that right?

13 A. Yes.

14 Q. In other words he lived just about as far
15 as you can possibly live in that pod from Mr. Garza;
16 isn't that right?

17 A. Yes, yes.

18 Q. And Allen just kept to himself, reading
19 his books, in his room?

20 A. Always.

21 Q. Always. You stated yesterday that when
22 Billy Garcia rode into town, the prison turned into
23 a ghost town; isn't that right?

24 A. Yes.

25 Q. What does "ghost town" mean to you?

1 A. It was, like, empty, no -- there was no
2 activity going on. Everyone was kind of staying in
3 their pods and not coming out. There was a few
4 people walking around, but you could feel the
5 tension.

6 Q. So everybody keeping to themselves, nobody
7 out kind of partying and celebrating?

8 A. Yeah, it stopped.

9 Q. Can you pull up Government's Exhibit 104.
10 I'm not sure how to make these marks go away.
11 Luckily, I have help.

12 I think you were shown this yesterday, or
13 maybe not. But do you understand what we're looking
14 at right here?

15 A. It's the living -- log, I guess, where
16 you're living.

17 Q. And actually, if we could go down to 2001.
18 All right. So here we are in 2001. You apparently
19 ended up at O-1 yellow pod on February 7, 2001,
20 looks like, right before midnight. Does that sound
21 about right?

22 A. No, not around midnight. They do moves in
23 the daytime. They don't do moves at midnight.

24 Q. So they may have the time wrong, but
25 roughly February 7, 2001, you moved into O-1 yellow;

1 is that right?

2 A. That's what it says on that paper.

3 Q. And you stayed there until June 11, 2001;
4 isn't that right?

5 A. Correct.

6 Q. So you got there about a month and a half,
7 almost two months before Mr. Garcia was killed, and
8 you stayed on there for another two and a half
9 months or so after he was killed; isn't that right?

10 A. That sounds about right.

11 Q. You never moved out?

12 A. No, the facility was locked down. There
13 was no moves at that time, unless you were going to
14 segregation.

15 Q. And when we look at this in total, and the
16 bottom half will be 2001, but you stayed in custody
17 until April 20 -- I'm sorry, November 2, 2006; is
18 that right?

19 A. That's when I got out of prison.

20 Q. That's when you paroled out?

21 A. Discharged.

22 Q. Discharged; you did your parole inside?

23 A. Yes.

24 Q. That's an option for some people, or a
25 requirement for some people, that you actually do

1 your parole period inside the prison; isn't that
2 right?

3 A. Correct.

4 Q. For you, was it optional or was it
5 required?

6 A. Well, I got out -- I paroled in -- right
7 in 2001 after the murder, right after September 11th
8 happened. I don't know the exact date, but I
9 paroled to Fort Stanton. It was a treatment center
10 in the -- close to Ruidoso -- and I stayed there for
11 maybe four to five months, and then I was violated.
12 They said that I was giving dirty urines and they
13 took me back. So it was -- I had no choice.

14 Q. You had to go back and finish out your
15 entire sentence?

16 A. I went back and finished my sentence.

17 Q. Okay. Can we see Government's Exhibit
18 Number 83, please?

19 Do you recognize what we're looking at
20 here?

21 A. That's Billy Lee Garcia's living log.

22 Q. So it's basically the same thing as you,
23 except it applies to Mr. Billy Garcia?

24 A. Yes, sir.

25 Q. All right. So let's go down to 2001. And

1 it looks like, you can see here that Mr. Garcia came
2 to town on March 7th, or looks like he arrived at
3 Southern after midnight on March 8, 2001. Does that
4 look about right?

5 A. That's what it says. I wasn't keeping
6 track on my calendar, but he pulled up around that
7 time.

8 Q. All right. He was there almost three
9 weeks before Mr. Garza gets killed; isn't that
10 right?

11 A. That's what -- I can't recall exactly how
12 long, but it was a short period.

13 Q. Okay. He wasn't there for months and
14 months anyway; right?

15 A. No, he was in orientation for -- he was in
16 orientation for a while, and when you're in
17 orientation, you're not even out on the line. So he
18 was in there for a little bit, and when he got out,
19 he was only out for a few days. That was it.

20 Q. Okay. Can we see Government's Exhibit
21 591?

22 You were shown this picture. You
23 recognize what's in it; isn't that right?

24 A. Correct.

25 Q. And as a matter of fact, that's you in the

1 front row on the bottom on the left-hand side; isn't
2 that right?

3 A. Yes.

4 Q. Rolando is right next to you; isn't that
5 right?

6 A. Yes.

7 Q. Rolando was a pretty big guy, wasn't he?

8 A. He was pretty healthy. He used to work
9 out every day.

10 Q. Worked out every day. He was probably
11 about 40 or 50 pounds heavier than you and
12 Mr. Patterson; right?

13 A. He was heavier than me. Patterson was
14 pretty healthy.

15 Q. He was about a half a foot taller than you
16 and Mr. Patterson; isn't that right?

17 A. I believe so.

18 Q. And this is a group photo, and I think
19 we've heard it described there is some kind of a
20 party in the yard. People were playing dominoes and
21 horseshoes, and the guards were passing out cameras
22 for you guys to take group photos with; isn't that
23 right?

24 A. No, that is not right.

25 Q. So somebody smuggled a camera into the

1 prison to take this picture?

2 A. No, you're allowed to buy tokens, and the
3 rec officer is a CO. He lets a trustee operate a
4 camera. We're allowed to take pictures and we pay
5 for pictures. It was a dollar a picture.

6 Q. Okay.

7 A. There was no party out there.

8 Q. All right. So no party; a legitimate
9 picture authorized by the guards and the powers that
10 be?

11 A. Yes, it was a privilege.

12 Q. So it looks like you guys are pretty
13 tight, you're pretty close. This isn't just people
14 from O-1 yellow pod; it's people from P-1 pod and
15 other folks in that picture; isn't that right?

16 A. Yes, that's right.

17 Q. And so it's a situation where all of you
18 were kind of coming together in the yard and you're
19 able to take that picture; isn't that right?

20 A. Correct.

21 Q. What's the date on the picture?

22 A. I can't see it. Where is it?

23 Q. If you'll look on the right-hand side,
24 you'll see a date. Can you read that date for the
25 jury?

1 A. Oh, that's March 16, 2001.

2 Q. March 16, 2001. Billy Garcia got to town,
3 got to prison March 8, 2001; isn't that right?

4 A. That's about right.

5 Q. Does that look like a ghost town to you?

6 A. That's a -- that's just a handful. Not
7 even a handful of people that were there. There
8 was -- if you were in Cruces, you would see there
9 was hundreds of people. That's just a handful. I
10 don't know about hundreds. I don't know the exact,
11 but that's just a few of us taking pictures. There
12 is hundreds of us.

13 Q. I get that it's not an aerial shot of the
14 whole high school; okay. It's friends; right?

15 A. Correct.

16 Q. You're tight with those people; right?

17 A. Yes.

18 Q. You're not afraid to be with those people,
19 are you?

20 A. No.

21 Q. Those are the guys you want to have a
22 picture for all time, so you can send to Mom and
23 Grandma and everybody and let them know how good
24 things are going for you; right?

25 A. We would take pictures and send them to

1 the wives, girlfriends, sisters, and if they have
2 friends, they would view the pictures. Sometimes we
3 get pen pals.

4 Q. And there is absolutely nothing wrong with
5 that. But tell me who in that photo is afraid to be
6 out in the yard because Billy Garcia got to town.
7 Tell me who was afraid.

8 A. No one right there. But there was people
9 that checked it in, rolled out, that knew they had
10 hits on them. There was several people that had
11 hits and they were gone.

12 Q. Okay. Do you know their names, the people
13 that had hits?

14 A. There is a few names that I know of.

15 Q. But not your best friends; right? Right?

16 A. What was that?

17 Q. Not your best friends; right?

18 A. Not my best friends what?

19 Q. Your best friends aren't checking out, are
20 they?

21 A. No, we're right there taking a picture.

22 Q. Okay. Allen is not in that picture, is
23 he?

24 A. No.

25 Q. You've got a tablet and you're keeping up

1 with discovery, aren't you?

2 A. I look at it.

3 Q. You know from the tablet in the discovery
4 that there are lots of pictures like this in the
5 discovery.

6 A. Yes.

7 Q. Not just you, but other folks in different
8 posings and whatnot; isn't that right?

9 A. Yes.

10 Q. Taken at Southern with a camera that you
11 buy with tokens, and a trustee takes legitimate
12 photos just like this; right?

13 A. Right.

14 Q. Taken at Southern New Mexico Correctional
15 Facility; isn't that right?

16 A. Correct.

17 Q. 80,000 pages of discovery on that tablet;
18 isn't that right?

19 A. Correct.

20 Q. Not one picture of Mr. Patterson like
21 that, is there?

22 A. No.

23 Q. Los Carnales. The very first man that you
24 committed physical and criminal violence against was
25 a Los Carnales member who took your shoes; isn't

1 that right?

2 A. Correct.

3 Q. And that was in Albuquerque; correct?

4 A. Yes, BCDC jail.

5 Q. And because you did that, you took out or
6 at least stabbed a Los Carnales member. That
7 brought you to the attention of SNM; right?

8 A. Yes.

9 Q. Because the sworn enemy of SNM is Los
10 Carnales; isn't that right?

11 A. Yes. But it didn't have anything to do
12 with SNM or Los Carnales. It had to do with my
13 shoes.

14 Q. But it was that tie -- it was because the
15 dude was Los Carnales that SNM comes knocking at
16 your door.

17 A. That sounds about right.

18 Q. Come join the team; right?

19 A. Not right away.

20 Q. Because in the New Mexico Correctional
21 system, there are two main power players. That's
22 Los Carnales and SNM; isn't that right?

23 A. At that time Los Carnales had no power on
24 any line. They were all PC.

25 Q. Following the pen riots in 1980, when New

1 Mexican Hispanics were trying to rule themselves,
2 Los Carnales and SNM emerged as the two larger
3 Hispanic groups; isn't that correct?

4 A. That sounds about right.

5 Q. And they were sworn enemies of one
6 another, particularly back in 2001; isn't that
7 right?

8 A. They were enemies, but by that time, the
9 war was already over. When the war was going on, I
10 was probably a kid.

11 Q. We've heard a tale, and from people that
12 were in your pod that there was an automatic green
13 light to hit a Los Carnales member; isn't that
14 right?

15 A. Oh, they slip through the cracks.
16 Sometimes they're in denial, sometimes they're not
17 even Los Carnales people; just put a jacket on them
18 because they don't like -- for a personal vendetta.

19 Q. I appreciate those reflections, but my
20 question is: SNM had -- if you were an SNM member,
21 you had an automatic green light to take out a Los
22 Carnales member anytime you saw them; isn't that
23 right?

24 A. That's about right.

25 Q. You didn't need a shot-caller to make that

1 call, did you?

2 A. It depends.

3 Q. What does "automatic green light" mean to
4 you, Mr. Martinez?

5 A. That you're going to get hit.

6 Q. Automatic green light. As a member of the
7 club, what does automatic green light mean?

8 A. That means that a person -- if you have a
9 green light on you, you get hit. But it doesn't
10 mean you get -- if you have money and drugs, you can
11 live. You can live.

12 Q. Let me ask this question. The question
13 is: Automatic green light means that you get to hit
14 somebody without needing approval from the guys in
15 Santa Fe or the guys higher up; isn't that right?

16 A. It's supposed to be, but people don't
17 follow it.

18 Q. You described the competency process that
19 you went through in state court and then in federal
20 court. Do you recall describing that yesterday and
21 this morning?

22 A. Yes.

23 Q. And you made it sound kind of passive,
24 like the court people looked at you and said, "Oh,
25 my gosh, he might be incompetent," and they forced

1 these tests upon you. That's the way you described
2 it. Isn't that right?

3 A. They didn't force it. They just wanted to
4 make sure.

5 Q. Okay.

6 A. Make sure that everything was legit and
7 make sure.

8 Q. So the first time it happens is in state
9 court; isn't that right?

10 A. That's right.

11 Q. You had four pending felony cases in state
12 court; isn't that right?

13 A. That's right.

14 Q. Including burglaries, possession and
15 trafficking; isn't that right?

16 A. Yes.

17 Q. And as Mr. Cooper brought up yesterday,
18 because of your criminal past, you were subject to
19 an eight-year habitual offender enhancement of every
20 single felony charge; isn't that right?

21 A. I didn't know the exact details about the
22 habitual offender, but that's what I was facing, you
23 know.

24 Q. Everybody in prison understands habitual
25 offender, do they not?

1 A. I know about the habitual offender, but I
2 didn't know if they could charge you on every charge
3 or just as a whole. I didn't know how that works.

4 Q. Every inmate in the New Mexico
5 Correctional Facility can tell you what a one-year
6 bitch is, a four-year bitch is, and an eight-year
7 bitch is; isn't that correct?

8 A. That's correct.

9 Q. And you understand the eight-year habitual
10 offender, don't you?

11 A. Yes.

12 Q. Because that terrified you, because with
13 all the time you were looking at on those four
14 felony cases, you were looking at 100 years in
15 prison; isn't that right?

16 A. If that's what it added up to, yes.

17 Q. And then a doctor comes along. Where did
18 you take those tests at for the state?

19 A. In Albuquerque.

20 Q. In Albuquerque. Okay. That makes sense.
21 Inside a jail or at a doctor's office?

22 A. At the public defender office.

23 Q. Okay. Took, what, four or five hours that
24 you spent with the psychiatrist?

25 A. No, maybe like two hours for each one, so

1 total maybe about four hours.

2 Q. Okay. So total of four hours. So you had
3 to make two trips down to the public defender's
4 office in Albuquerque, you meet with the shrink in a
5 little conference room; isn't that right?

6 A. I met with three different doctors.

7 Q. Okay. And they give you some tests and
8 you take those tests; isn't that right?

9 A. That's correct.

10 Q. And based on those four hours of
11 interaction with three psychologists, 100 years just
12 gets erased from your future; isn't that right?

13 A. That's right.

14 Q. So when the federal marshals come knocking
15 December 3, 2015, a day you'll never forget, will
16 you?

17 A. Never.

18 Q. And they start talking to you using scary
19 words like VICAR, and racketeering, and life
20 sentence, and death penalty. And you remembered:
21 Wait a minute, I've got a ticket; right?

22 A. No.

23 Q. I've got a golden ticket. All I got to do
24 is mess up those tests again; isn't that right?

25 A. No.

1 Q. You're saying somebody forced you to claim
2 incompetency?

3 A. No one forced me.

4 Q. But the plan backfired; isn't that right?

5 A. Not really.

6 Q. Because you see, in the federal system, it
7 ain't no four hours with three psychologists at the
8 cozy public defender's office. It's a plane trip to
9 what, El Rino first; right?

10 A. I went to Oklahoma.

11 Q. El Rino.

12 A. All right.

13 Q. And then you went back out to California,
14 to Los Angeles, where you spent two months in the
15 facility; isn't that right?

16 A. That's correct.

17 Q. And you said there were listening devices
18 in your cell there; isn't that right?

19 A. I didn't -- every cell has a speaker and a
20 button.

21 Q. They watched you for two months, didn't
22 they?

23 A. Yes, they have cameras everywhere.

24 Q. They listened to all of your phone calls,
25 didn't they?

1 A. Yes.

2 Q. And that's why it didn't work this time;
3 right?

4 A. I wasn't trying. I was just doing the
5 tests and shutting down, and the outcome was the
6 outcome.

7 Q. You stated that you weren't able to finish
8 Sequoia because you had a lot of hatred and
9 frustration; isn't that right?

10 A. I completed Sequoia. I got out with a
11 certificate.

12 Q. Well, when it came -- and I'm sorry, but
13 when it came time to sentence you as an adult for a
14 crime you committed as a child, you were considered
15 not amenable to treatment because of what you said
16 yesterday, your hatred and frustration; isn't that
17 right?

18 A. I had hatred, frustration at that time.

19 Q. Hatred for the man who killed your father
20 and your older brother, Chris; isn't that right?

21 A. Correct.

22 Q. Your father's name was Chris; isn't that
23 right?

24 A. Yes.

25 Q. Your brother is named Chris, Jr.?

1 A. Yes, sir.

2 Q. You had a complicated relationship with
3 your father, didn't you?

4 A. Yes.

5 Q. You loved your father, didn't you?

6 A. Yes.

7 Q. That's hard. He was killed. He was
8 murdered; right?

9 A. Yes.

10 Q. Your brother was murdered; isn't that
11 right?

12 A. Yes.

13 THE COURT: Mr. Lahann, would this be a
14 good time for us to take our morning break?

15 MR. LAHANN: It would, Judge.

16 THE COURT: All right. We'll be in recess
17 for about 15 minutes. All rise.

18 (The jury left the courtroom.)

19 THE COURT: All right. We'll be in recess
20 for about 15 minutes.

21 (The Court stood in recess.)

22 THE COURT: All right. I think we have
23 all the defendants in the room, and we have an
24 attorney for each defendant. Is there anything we
25 need to discuss before we bring the jury in?

1 Mr. Castellano?

2 MR. CASTELLANO: No, Your Honor.

3 THE COURT: How about from the defendants?
4 Anything to discuss?

5 MR. LAHANN: No, Your Honor.

6 (The jury entered the courtroom.)

7 THE COURT: All right. Mr. Martinez, I'll
8 remind you that you're still under oath.

9 Mr. Lahann, if you wish to continue your
10 cross-examination of Mr. Martinez, you may do so at
11 this time.

12 MR. LAHANN: Thank you, Your Honor.

13 THE COURT: Mr. Lahann.

14 BY MR. LAHANN:

15 Q. Prisoners develop -- Mr. Martinez,
16 prisoners develop routines; isn't that right?

17 A. Develop what?

18 Q. Routines. Things that you do every day,
19 the same way every day; isn't that right?

20 A. Yeah.

21 Q. It's pretty much like any other kind of
22 institutional thing. You get into habits: Where
23 you sit, what you do every day; isn't that right?

24 A. For the most part, yes.

25 Q. Prison is kind of monotonous in that way;

1 isn't that right?

2 A. What is "monotonous"?

3 Q. The same-old-same-old every day.

4 A. Yeah.

5 Q. There's not a lot of exciting,
6 entertaining things happening; isn't that right?

7 A. No.

8 Q. What was your routine in the mornings?

9 A. Get up, wash up, brush my teeth.

10 Q. What would wake you up? Did you have an
11 alarm clock?

12 A. No.

13 Q. What was it that would wake you up every
14 morning?

15 A. The sound of the door, the electric buzz,
16 and the door would open. And I would be up before
17 the doors automatically. In prison, you've got to
18 be up before the doors open.

19 Q. Got to be up before the doors open because
20 you never know what's coming in; right?

21 A. Right.

22 Q. At that time, in Southern, the doors
23 popped at 6:00 a.m.; isn't that right?

24 A. Around that time.

25 Q. And they popped all throughout the pod;

1 isn't that right?

2 A. Yes.

3 Q. One big electronic (makes noise) and every
4 door pops; is that right?

5 A. I don't know exactly how it works, but --

6 Q. Tell me about breakfast. Was it at the
7 same time every day?

8 A. No.

9 Q. How do you know when you could go down for
10 breakfast?

11 A. They would call breakfast.

12 Q. Over some kind of loud speaker?

13 A. They would say, "Chow call."

14 Q. Over, like, a loud speaker?

15 A. In the pod, yes.

16 Q. Okay. And the reason that it wasn't the
17 same every day is because different units rotated
18 who went first, who went middle, who went last;
19 isn't that right?

20 A. That's right.

21 Q. And they never told you. It was a random
22 rotation, wasn't it?

23 A. At random.

24 Q. And there are probably security reasons
25 for that, that we can all appreciate. But you never

1 knew on any particular morning what time it was that
2 you would actually go down and eat breakfast, did
3 you?

4 A. I knew somewhat of a timeframe, but not
5 exactly.

6 Q. Sure. It was, what, between 6:00 and
7 8:00?

8 A. Correct.

9 Q. So they wouldn't call you for breakfast at
10 2:00 in the afternoon; right?

11 A. No.

12 MR. LAHANN: Can we see Government's
13 Exhibit number 74? I don't think that's it. Is
14 there a generic one? Maybe 75 or 73.

15 MR. CASTELLANO: I'm not sure this has
16 been admitted, but there is no objection to its
17 admission, Your Honor, if it has not been.

18 THE COURT: This is 73? It's been
19 admitted.

20 MR. LAHANN: All right. We'll use the one
21 that's admitted.

22 BY MR. LAHANN:

23 A. All right. Do you recognize what's
24 depicted in that exhibit, Mr. Martinez?

25 A. Yes.

1 Q. That's a standard cell at Southern New
2 Mexico Correctional Facility back in 2001, wouldn't
3 you agree?

4 A. Yes.

5 Q. It's got a bunk, an area where you can
6 hang your shirts, and then a long desktop; isn't
7 that right?

8 A. Yes.

9 Q. The stool itself is bolted into the
10 concrete; isn't that right?

11 A. That's right.

12 Q. And we can understand the reasons why you
13 wouldn't have loose furniture in a prison cell, but
14 that stool ain't moving, it ain't going nowhere, is
15 it?

16 A. Nowhere.

17 Q. The toilet is also bolted down, as is the
18 sink; isn't that right?

19 A. That's right.

20 Q. Now, you said yesterday that there's not a
21 lot of walking space in the cells, is there?

22 A. There is not very much walking space.

23 Q. The bunk itself is probably what, two,
24 three feet wide?

25 A. I don't know. I never measured it.

1 Q. Okay. Does that sound about right,
2 though, probably closer to three?

3 A. Yeah.

4 Q. All right. We see here that the entire
5 distance from wall to wall appears to be 7.6 feet.
6 Does that sound about right?

7 A. Yeah.

8 Q. All right. And of course, the walking
9 room is only that space between the bunk and the
10 desktop closet area; isn't that right?

11 A. Just about.

12 Q. So maybe, you know, roughly, maybe you've
13 got three feet of walking room there; isn't that
14 right?

15 A. That sounds about right.

16 Q. And then in the middle of it, before you
17 even get to the sink, you've got that big old stool
18 bolted down to the concrete?

19 A. That's right.

20 Q. Not a lot of room, as you said, for three
21 or four people to be coming in?

22 A. No.

23 Q. You stated that you got up every morning
24 when you heard the doors pop because you never knew
25 what might be coming in; isn't that right?

1 A. It's just a habit of getting up. And as
2 expected from SNM, we're supposed to be up, ready,
3 washed up, laced up, just ready. That was expected
4 of us.

5 Q. Kind of like the Army, you've got to have
6 everything --

7 A. Yeah, make your bed, and look -- present
8 yourself right.

9 Q. And that plays into the whole routine and
10 the discipline kind of thing; right?

11 A. Pretty much.

12 Q. All right. Now, you learn as a
13 prisoner -- not just an SNMer, but any convict is
14 always aware of that door when you're in your cell;
15 isn't that right?

16 A. That's right.

17 Q. As a matter of fact, even when you would
18 go see a friend, somebody that said, "Hey, can you
19 stop by and get me, we'll go to chow together," you
20 always knocked on their door even when they were
21 expecting you, didn't you?

22 A. No.

23 Q. You never opened somebody's door just out
24 of the blue, did you?

25 A. We never opened the door, but the doors

1 would open and us being close, we were walking in
2 each other's rooms without asking.

3 Q. So what about somebody that's in their
4 cell -- say you're in your cell, you didn't even
5 know some people are coming by, but all of a sudden
6 two or three folks show up in your cell. That's
7 "Danger, Will Robinson" time, isn't it?

8 A. It could be, but there was a bunch of
9 junkies, and there was heroin. So going into a pod,
10 going into a room to go do a couple of shots is
11 inviting. You see that, and there was heroin, so...

12 Q. Are you saying that you weren't -- you
13 didn't learn to become alert for that door as a
14 convict?

15 A. As friends, we would be in and out of each
16 other's rooms.

17 Q. What is bulldogging?

18 A. Taking advantage -- bulldogging for stuff,
19 basically kind of robbing people.

20 Q. Isn't bulldogging rushing into somebody's
21 cell, physically harming them, and grabbing
22 something of value from them?

23 A. No.

24 Q. No. Wouldn't you call that a robbery,
25 taking something from them?

1 A. Just putting pressure on them and
2 intimidating them to --

3 Q. Are you saying that in your entire time in
4 the New Mexico Department of Corrections you never
5 saw -- other than the Garza thing, you never saw
6 anybody get hurt when people suddenly bolted into
7 somebody's cell?

8 A. I've seen it a few times.

9 Q. You've done it yourself. You stabbed
10 somebody.

11 A. Yes. I never denied that.

12 Q. No, you never did.

13 A. No.

14 MR. LAHANN: Defendants' Exhibits BX-9,
15 BX-10, I'm moving those into evidence. It's my
16 understanding that the Government does not object.

17 THE COURT: Is that correct,
18 Mr. Castellano?

19 MR. CASTELLANO: That is correct, Your
20 Honor.

21 THE COURT: Any objection from any other
22 defendants? Not seeing or hearing any, Defendants'
23 Exhibits BX-9 and BX-10 will be admitted into
24 evidence.

25 (Defendants' Exhibits BX-9 and BX-10

1 admitted.)

2 THE COURT: Mr. Lahann.

3 BY MR. LAHANN:

4 Q. All right. Mr. Martinez, tell me what's
5 depicted in that photograph.

6 A. That's a bunch of brothers taking a photo.

7 Q. Very similar to the one we showed you
8 earlier; is that right?

9 A. There's lots of them.

10 Q. Lots? None with Allen?

11 A. What was that?

12 Q. None have Allen in them, do they?

13 A. None of them have what?

14 Q. Mr. Patterson.

15 A. Oh, no. He would never take pictures.
16 Never.

17 Q. Never. Is that you up front? I see it's
18 labeled that it's you, but is that you back in the
19 day?

20 A. That's me right there.

21 Q. What's that in your hand, your right hand?

22 A. What's in my right hand?

23 Q. There seems to be something kind of
24 hanging there.

25 A. That's the string that's hanging from the

1 shorts I'm wearing. There is a drawstring to
2 tighten up the waistband, and it's hanging out of my
3 shorts. That's what it is.

4 Q. Let me see that other photo. Now, we're
5 showing you what's been admitted as BX-10. We'll
6 blow that up a little bit for you. Looks like it
7 might have been taken the same day. Can you tell
8 the jury what's depicted there?

9 A. Me and another SNM member taking a
10 picture.

11 Q. And I think we can tell a little bit
12 better now with that picture your shorts and that
13 long drawstring for the athletic shorts; isn't that
14 right?

15 A. Yes.

16 Q. March 8, 1995. No longer pictures. I'm
17 just asking you: What happened on March 8, 1995?

18 A. I think that was the day my brother and
19 dad got killed.

20 Q. It is. What year were you born
21 Mr. Martinez?

22 A. June 23.

23 Q. What year?

24 A. 1979.

25 Q. So June 23, 1979, you would have been 15,

1 almost 16, when your father and brother were
2 murdered at Sal's Liquor Lounge; right?

3 A. I'm not exactly sure, but if that's what
4 it adds up, that's what it is.

5 Q. Let's do the math. From '79 to '89, you'd
6 be 10; right?

7 A. Right.

8 Q. And then -- so let's just go from '90
9 would make you 11; '91 would make you 12; '92 would
10 make you 13; '94 would make you 14; '95 would make
11 you 15, going on 16; isn't that right?

12 A. That sounds mathematically right.

13 Q. You were not 11 years old in the car and
14 the gun jamming, were you?

15 A. I wasn't 11 years old. That whole time
16 was a blur, so I just estimated the age.

17 Q. Estimated. And I think maybe I even
18 messed up by counting, but we still got there. We
19 can understand being off by maybe a year or two.
20 But there is a big difference between being an
21 11-year-old and being a 15-year-old, wouldn't you
22 agree?

23 A. That doesn't take away the fact that they
24 were killed on the street, and laying on the floor.

25 Q. I understand. And the question is: There

1 is a big difference between being 11 and 15; isn't
2 that right?

3 A. It's just an age difference.

4 Q. Well, at 11, you were not being locked up
5 almost every other month because you were out
6 committing crimes, were you?

7 A. I was locked up a few times.

8 Q. At 11?

9 A. Around -- estimating from there to about
10 13.

11 Q. Okay. Well, 13 and on. Because we know
12 why you were not there with your father and your
13 brother when they were murdered, because you were in
14 the custody of Children, Youth, and Families on a
15 one-year commitment, weren't you?

16 A. I was just waiting -- I just had entered
17 the D-home, and I hadn't been sentenced yet.

18 Q. And for the jury's understanding, the
19 D-home means Detention Home; right?

20 A. Detention.

21 Q. You were in the custody of Children, Youth
22 and Families Department because of crimes that you
23 committed as a juvenile; isn't that right?

24 A. Yes.

25 Q. That's why you saw the reports about your

1 father and your brother on TV; isn't that right?

2 A. I woke up in the morning and watched the
3 news, and I seen my brother's car in the parking
4 lot, and I seen my dad and my brother's body
5 covered.

6 Q. Your mom didn't call you to say, "Hey,
7 don't turn on the news this morning; we need to
8 talk"?

9 A. She just can't call into the pod on my
10 cellphone and say, "Hey, don't watch the news." It
11 ain't like that.

12 Q. The pod -- so you were actually in
13 custody?

14 A. I was in custody. I said that -- I told
15 the doctor that I was out. But I lied to her.

16 Q. Chris Coffin. Does that name mean
17 anything to you?

18 A. Say it again?

19 Q. Chris Coffin.

20 A. No, that don't mean nothing to me.

21 Q. Sorry. Curtis Coffin?

22 A. Curtis Coffin.

23 Q. Does that name mean anything to you?

24 A. Yes.

25 Q. Ralph Gutierrez. Does that name mean

1 anything to you?

2 A. Yes.

3 Q. Ronnie Contreras. Does that name mean
4 anything to you?

5 A. Yes.

6 Q. Those are the men that killed your father
7 and your brother; isn't that right?

8 A. One person pulled the trigger.

9 Q. They were together and they were all
10 charged with that murder, weren't they?

11 A. Yes.

12 Q. They were Los Carnales, weren't they?

13 A. Yes.

14 Q. Leonard Lujan comes to you as you're
15 strolling away from a family visit, and he comes to
16 you, Eugene Martinez, to say, "Hey, you got to take
17 care of something"; right?

18 A. Correct.

19 Q. Leonard Lujan said, "Let's break bread
20 like Jesus and I'm the messiah," and you said,
21 "Yeah, let's go talk"; right?

22 A. No, he told me that, "Break bread," and I
23 just ignored him.

24 Q. You ignored him?

25 A. I ignored him.

1 Q. Did you have a conversation?

2 A. I had a conversation, but after he said
3 that, I was gone.

4 Q. So Leonard chose you. You were one of the
5 youngest SNMers in that pod, weren't you?

6 A. I think I was.

7 Q. There was Willie Amador and Jeremiah Baca
8 and all those older guys; right?

9 A. Yes.

10 Q. And Leonard chose you; right?

11 A. He seen me walking into the pod, and asked
12 me, "Do you live in that pod?"

13 And I said, "Yes."

14 And he said, "Hey, well, go take this
15 message and put a team."

16 Q. The question is: Leonard chose you,
17 didn't he?

18 A. Yes.

19 Q. And the reason that Mr. Garza had to be
20 killed was because he was Los Carnales; right?

21 A. There was two different -- two different
22 stories. That, and that he was a snitch.

23 Q. Well, Castillo we've heard was the rat and
24 Garza was Los Carnales; right?

25 A. That's what's in there, but in prison,

1 there's all kinds of stories. People make up
2 stories for anything.

3 Q. And that's why Leonard chose you; right?

4 A. I don't know why he chose me.

5 Q. Because you hate the Los Carnales, don't
6 you?

7 A. Everyone hates LC.

8 Q. You hate the gang that took your father
9 away, don't you?

10 A. Yeah.

11 Q. You hate the gang that took your brother
12 away before you even really got to spend much time
13 with him; right?

14 A. Right.

15 Q. You had every reason in the world to kill
16 Rolando Garza, didn't you, Mr. Martinez?

17 A. No.

18 Q. Allen Patterson had no reason, none at
19 all, to kill Rolando Garza, did he?

20 A. If --

21 Q. Did he?

22 A. If he's ordered to kill somebody, he'll
23 kill him.

24 MR. LAHANN: No further questions.

25 THE COURT: Thank you, Mr. Lahann. Any

1 other defendant have cross-examination? Mr.
2 Granberg?

3 CROSS-EXAMINATION

4 BY MR. GRANBERG:

5 Q. Good morning, Mr. Martinez.

6 A. Good morning.

7 Q. So you pled guilty to the murder of
8 Rolando Garza; correct?

9 A. Correct.

10 Q. Do you remember Mr. Garza?

11 A. Yes.

12 Q. You said previously that he was tall, he
13 was well-built?

14 A. Yes.

15 Q. Did you play sports with him?

16 A. No.

17 Q. Can you tell if he was a right-handed or
18 left-handed guy?

19 A. I never seen it.

20 Q. You never played?

21 A. No.

22 Q. So when you decided to cooperate, you
23 moved to Sandoval County jail; is that right?

24 A. I moved to -- no, it was another jail.

25 Q. It was another jail? Were there other

1 cooperators there, too?

2 A. There was two.

3 Q. Two of them. Who was there?

4 A. Jo Jo, Fred Quintana, and Richard
5 Gallegos.

6 Q. And the reason why they moved you there
7 was for safety concerns; right?

8 A. Yes.

9 Q. So that you wouldn't get attacked by
10 people you're snitching on; right?

11 A. Correct.

12 Q. But you were able to freely talk with
13 these other cooperators, weren't you?

14 A. No.

15 Q. You were held in different cells?

16 A. We had my own cell, and we were 23 hours
17 locked down; you get a shower and yard.

18 Q. But you had your tablet, though; correct?

19 A. No.

20 Q. You didn't have your tablet?

21 A. No. At that time it was sent out. And I
22 moved. They came and took it out of the Estancia,
23 because there was something happened with the
24 tablets. And they took my tablet to upload it and
25 then when I moved -- so I didn't have it at that

1 time.

2 Q. Okay. But when you received your tablet,
3 it was uploaded with the most current discovery; is
4 that right?

5 A. Correct.

6 Q. And you obviously know how to use a
7 tablet; is that right?

8 A. I have a basic knowledge.

9 Q. And you know that you can start at
10 document number 1 and read all the way to document
11 number 50,000, 60,000; correct?

12 A. Yes.

13 Q. But you also know that you can search
14 through there; right? Key words, names?

15 A. Yes.

16 Q. So if you wanted to jump to Mr. Chavez,
17 you could just type in "Chris Chavez" and, boom, all
18 the documents related to Chris Chavez's name would
19 appear; is that right?

20 A. That's right.

21 Q. And additionally, you could save -- you
22 could create a shortcut on your tablet so that you
23 wouldn't have to go through this process. You could
24 just save it to the desktop area, so you could just,
25 like, the next time, you know what, push it, and it

1 will come right up; is that correct?

2 A. You could create a new folder.

3 Q. And that way, it's all nice and organized;
4 is that correct?

5 A. Correct.

6 Q. Now, when you had your tablet taken away
7 from you, did it have all the recent discovery in
8 this case?

9 A. It just had the very first discovery that
10 came on.

11 Q. But your tablet would get updated during
12 the course of time; isn't that correct?

13 A. Correct.

14 Q. And you had your tablet up until about a
15 month ago?

16 A. Yes.

17 Q. So let's talk about your competency
18 evaluation here. Okay?

19 A. All right.

20 Q. So the doctors found you were competent on
21 February 27 of last year; right?

22 A. Yes.

23 Q. And the doctors found that you were
24 exaggerating your mental condition so that your
25 charges could be dropped; isn't that correct?

1 A. I wasn't exaggerating for my charges to be
2 dropped.

3 Q. When was the first time you thought to do
4 this?

5 A. To do what?

6 Q. To exaggerate your mental condition to get
7 your charges dropped.

8 A. I wasn't doing it to get my charges
9 dropped. I was just -- at California I was just
10 shutting down, and I exaggerated a little bit.

11 Q. When was --

12 A. But I didn't know -- I didn't know my
13 charges were going to get dropped.

14 Q. Mr. Martinez, when was the first time you
15 thought of the idea to exaggerate your mental
16 condition to get your charges dropped?

17 A. I can't recall.

18 Q. Isn't it true that you and Leonard Lujan
19 agreed to claim that you were both crazy to escape
20 your charges?

21 A. No.

22 Q. When you went to California, you were at
23 this facility for two months; correct?

24 A. Correct.

25 Q. Two long months, just like this trial, two

1 long months. And you chose to wake up every morning
2 and decide that, you know what? I may have to talk
3 to a doctor today. I may have to take a test today.
4 But you know what? I'm going to keep up the fraud.
5 I'm going to keep up the scam. And I'm going to
6 continue to claim that I'm not competent. I'm going
7 to continue to exaggerate my condition on these
8 tests and evaluations. Is that correct?

9 A. Somewhat.

10 Q. And you did this every day; correct?

11 A. No.

12 Q. Oh, you didn't do it every day?

13 A. Not every day. I wouldn't see -- there
14 was days when I didn't have no contact with no one.

15 Q. So on the days that you did, you had to
16 make a conscious decision in your head to go ahead
17 and con the system; isn't that correct?

18 A. No.

19 Q. And previously you said that you couldn't
20 stop this process; that the Court had wanted to make
21 sure that you're competent. But you could have just
22 as easily told the doctors, "You know what? You
23 know what? It's all an act. I'm really competent";
24 couldn't you have?

25 A. I didn't know if I could do that. I never

1 asked.

2 Q. You never thought that you could do that?

3 A. No, I just went -- went with it, went with
4 the flow.

5 Q. You never thought that you could just tell
6 the truth, did you?

7 A. The truth about what?

8 Q. About your mental condition. You never
9 talked to the doctors, "You know what, Doctor
10 so-and-so, I am competent. I'm just acting dumb to
11 get out of my charges"?

12 A. I do have problems. I've been through a
13 lot of stuff.

14 Q. You never thought to tell the doctor the
15 truth, did you?

16 A. I told the doctor some truth and
17 exaggerated on some.

18 Q. So the first time -- let me ask you this.
19 Are you familiar with the term "con artist"?

20 A. Yes.

21 Q. What does that term mean to you?

22 A. Just to con, to burn people. I don't
23 know. I guess.

24 Q. To defraud persons?

25 A. Maybe defraud someone.

1 Q. What does "defraud" mean to you?

2 A. I don't know. Can you explain it?

3 Q. Sure. It means to lie. It means to lie
4 to somebody.

5 A. Yes.

6 Q. So the first con was when you got your
7 state charges dismissed; isn't that correct?

8 A. I wasn't intentionally trying to get my
9 charges dismissed at that time. But when it
10 happened, I was happy.

11 Q. But that was a lie?

12 A. No, that wasn't.

13 Q. It was not a lie? Your mental state, your
14 mental condition on those competency examinations
15 were not a lie?

16 A. No. I was having -- going through a lot
17 of stuff, and that's what the results came out to.
18 That's what the doctors -- they're doctors, and that
19 was the result that came out.

20 Q. You didn't exaggerate your answers during
21 that examination in the public defender's office to
22 get your charges dismissed?

23 A. I exaggerated a little bit.

24 Q. So you lied.

25 A. On a few stuff, I did.

1 Q. And the second time you tried to be a con
2 artist was at the facility in Los Angeles; is that
3 correct?

4 A. That's correct.

5 Q. But it didn't work on that time; right?

6 A. No.

7 Q. And now you're here in front of the jury;
8 right?

9 A. Correct.

10 Q. And here is going to be your greatest con
11 of all time, getting the jury to believe that you
12 are telling the truth; isn't that correct?

13 A. There was still two dead bodies in two
14 different locations. Someone had to call the shots.

15 Q. Isn't that correct?

16 A. No, I'm telling the truth about the
17 murders.

18 Q. So only after the competency evaluation
19 came back did you decide to start working with your
20 attorney to turn a plea deal; isn't that right?

21 A. Yes, I couldn't do nothing until I was
22 found either incompetent or competent. I could not
23 further go, I couldn't sign on the joint defense,
24 there was nothing I could do till they figured out
25 my competency hearing.

1 Q. Once your competency came back at the end
2 of February, you spent about a month, month and a
3 half, and you were already in front of the judge
4 pleading guilty; correct?

5 A. I did.

6 Q. And the next day you began to talk with
7 the FBI about the murders; right?

8 A. Correct.

9 Q. And so in between May 5th, 2017, you've
10 had quite a bit of time to review discovery on your
11 tablet; isn't that right?

12 A. I had a little bit of time.

13 Q. And you mentioned earlier that you were a
14 cooperator informant; right?

15 A. Yes.

16 Q. And that you were being paid by the US
17 Government for your information?

18 A. I got a few dollars at one time.

19 Q. A few dollars, like five dollars?

20 A. Like about \$900.

21 Q. Like \$975?

22 A. That's --

23 Q. Is that just a few dollars?

24 A. Yeah, that's nothing.

25 Q. That's nothing to you? Okay. But you

1 were terminated as an informant; isn't that right?

2 A. They turned it off.

3 Q. They turned it off?

4 A. Or terminated it, however.

5 Q. They terminated you because you kept
6 testing dirty for drugs; isn't that right?

7 A. No.

8 Q. No?

9 A. I have never had a dirty urine since I've
10 had my tablet, not one time.

11 Q. Okay. When did you get your tablet?

12 A. When they gave it -- the day they gave it
13 to everyone. I don't know the date. But I got it
14 when everyone else got their tablet.

15 Q. Well, everyone got their tablet way back
16 in, like, the spring of 2016.

17 A. That's when I got my tablet.

18 Q. And you told the jury yesterday that the
19 last time you came up dirty on a UA was eight months
20 ago.

21 A. I didn't say that I came up dirty on a UA.
22 I said I did drugs, but I didn't come up dirty.

23 Q. So you -- okay. So you admit to using
24 drugs eight months ago?

25 A. I did.

1 Q. And is that sooner than the spring of
2 2016?

3 A. Say that again.

4 Q. You said you were using drugs eight months
5 ago; right?

6 A. Yes.

7 Q. Now, is that sooner than the spring of
8 2016, when you received the tablet?

9 A. Sooner?

10 Q. Sooner, earlier, closer to here, closer to
11 now?

12 A. It may have been.

13 Q. So that you were using drugs from the time
14 you got your tablet, in early 2016, until about
15 eight months ago. Is that your testimony?

16 A. That's correct. I think all of these
17 defendants are using drugs.

18 Q. Mr. Martinez, what kind of drugs were you
19 using?

20 A. Suboxone.

21 Q. What else?

22 A. I smoked weed one time.

23 Q. And you got drugs on your birthday?

24 A. Around that time.

25 Q. When was your birthday?

1 A. June 23.

2 Q. And so you were -- you got drugs delivered
3 to you specifically, and you used these drugs
4 specifically because, hey, it's my birthday; isn't
5 that right?

6 A. Change the channel, in jail.

7 Q. Change the channel?

8 A. Yeah.

9 Q. What do you mean by change the channel?

10 A. I'm going through a lot of stuff. We're
11 in the circumstances, and every once in a while --

12 Q. Is that your justification for using
13 drugs, changing the channel?

14 A. Numb myself out.

15 Q. But you gave up money from the Government
16 so you could just change the channel?

17 A. They didn't stop it, because I smoked weed
18 back then.

19 Q. So you're saying the Government continued
20 to pay you money even though you're coming up dirty
21 on UAs and continuing to use drugs?

22 A. I have never received a UA.

23 Q. So did the Government know you're using
24 drugs? Easy question.

25 A. I've told them.

1 Q. You told them?

2 A. I have told them.

3 Q. So the Government knew you were using
4 drugs and they were continuing to pay you?

5 A. They stopped my money, but it wasn't
6 because of that.

7 Q. So let's go to the night of March 25. You
8 run into Leonard Lujan; is that correct?

9 A. Correct.

10 Q. He runs into you; one of the ways. And he
11 tells you to break bread and share with the Messiah;
12 is that correct?

13 A. Correct.

14 Q. Then you go to the gym, and when you get
15 back to your cell, you tell Willie Amador, Jeremiah
16 Baca, Jesse Ibarra, and Ray Molina to carry out the
17 hit?

18 A. I didn't go to the gym.

19 Q. You didn't go to the gym?

20 A. No.

21 Q. But when you came back from the gym, did
22 you tell these folks to carry out the hit?

23 A. I never went to the gym.

24 Q. Okay. Did you tell Willie Amador, did you
25 tell Jeremiah Baca, did you tell Jesse Ibarra and

1 Ray Molina to carry out the hit?

2 A. Not really. We were discussing it.

3 Jeremiah Baca never knew nothing. It was
4 automatically, "leave him out."

5 Q. So you were discussing it with these guys?

6 A. Trying to -- they were trying to put it
7 together, and I was the youngest one there. I have
8 no seniority. So I took it to the person I thought
9 that was oldest and might be able to -- you know, he
10 was there before me, he knew more about the
11 situation than me, and I just brought it up. And as
12 members of the gang, there's -- the plot goes on.

13 Q. Let's talk a little bit more about Willie
14 Amador and Jeremiah Baca.

15 A. Right.

16 Q. Those two guys are dead; isn't that
17 correct?

18 A. I'm not for sure. I know Willie is dead,
19 but I don't know about Jeremiah Baca.

20 Q. You told the ladies and gentlemen of the
21 jury yesterday that Jeremiah Baca is dead; do you
22 remember that?

23 A. I'm not for sure. But I heard there's a
24 lot of people who are dead.

25 Q. But those two guys cannot come into court

1 here and clear their names on this, can they?

2 A. I never implicated Jeremiah Baca.

3 Q. They can't come into court and say, "You
4 know what? Eugene is full of crap"?

5 A. It ain't my fault that he died.

6 Q. So is there also another SNM rule that if
7 you're told to do a hit, that you must participate
8 in the hit, as opposed to supervising the hit?

9 A. Yeah, you're supposed to. But I've seen
10 people get out of hits in all situations.

11 Q. That wasn't the question. If you're told
12 to do a hit, are you expected to carry it out, as
13 opposed to just supervising it?

14 A. Yes.

15 Q. And next you say that Chris Chavez
16 overheard this conversation on the night before
17 March 25, and just volunteered. Is that your
18 testimony?

19 A. Yes.

20 Q. And you gave this during an interview on
21 May 5, 2016; correct?

22 A. Correct.

23 Q. Do you also remember giving an interview
24 on November 2 that same year?

25 A. I might have. I gave a few of them.

1 Q. Do you remember saying in that interview
2 that, "few people knew about the hit, and those
3 involved were not given more than five minutes'
4 warning"? Do you remember saying that?

5 A. I don't remember saying about five
6 minutes' warning.

7 Q. You don't remember that?

8 A. No.

9 MR. GRANBERG: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MR. GRANBERG:

12 Q. Mr. Martinez, what does it say right here
13 starting with "Few people"? We're going to need to
14 turn the microphone this way.

15 A. Oh, I didn't write this report. But it
16 says, "Few people knew about the hit, and those
17 involved were not given more than five minutes'
18 warning."

19 Q. Okay. Thank you, Mr. Martinez.

20 So did the plan for this hit come on
21 Sunday morning?

22 A. No.

23 Q. Then why are you telling the FBI agents
24 that there's five minutes' warning on this hit, and
25 few people knew about it?

1 A. Usually on the hit, that's the way it goes
2 down. They're notified, so they don't know. But
3 there's times when it don't. And maybe he got it
4 wrong and misunderstood me and wrote that.

5 Q. Or maybe you were lying.

6 A. No, I wasn't lying.

7 Q. Or maybe you were lying the whole time;
8 not just on May 5th, but also on November 2.

9 Do you know who Ben Clark is?

10 A. Who?

11 Q. Ben Clark.

12 A. Yes.

13 Q. Is Ben Clark a member of the SNM?

14 A. Yes.

15 Q. Is Ben Clark a cooperator, to your
16 knowledge?

17 A. Yes.

18 Q. Do you remember telling Ben Clark that you
19 and Angel DeLeon carried out the hit on Rolando
20 Garza?

21 A. No.

22 Q. You don't remember that?

23 A. I never told him that.

24 Q. You don't remember telling him that you
25 were the one that jumped on Mr. Garza's back, and

1 that he was too big for you, so that Mr. DeLeon had
2 to go in and choke him out?

3 A. I never told him that.

4 Q. You never told Ben Clark that?

5 A. Mr. DeLeon lived in a whole different pod
6 than I did.

7 Q. You never told Mr. Clark that?

8 A. No, I never told him that.

9 Q. So let's go back the morning of March 26.
10 You said that Mr. Garza was brushing his teeth; is
11 that correct?

12 A. That's correct.

13 Q. And you said that he was at the sink; is
14 that correct?

15 A. Right.

16 MR. GRANBERG: Could we pull up
17 Defendants' Exhibit BX-16?

18 Your Honor, prior to beginning the cross,
19 counsel and I had agreed to admit three pictures:
20 Exhibits BX-16, BX-15 and BX-14. And I'd like to
21 move for their admission at this time.

22 THE COURT: Is that correct,
23 Mr. Castellano?

24 MR. CASTELLANO: That's correct, Your
25 Honor.

1 THE COURT: Any objection from any other
2 defendant? Not seeing or hearing any, Defendants'
3 Exhibit BX-16, BX-15 and BX-14 will be admitted into
4 evidence.

5 (Defendants' Exhibits BX-14, BX-15, and
6 BX-16 admitted.)

7 BY MR. GRANBERG:

8 Q. Mr. Martinez, what do you see there?

9 A. A sink and toilet bowl.

10 Q. That is the sink and the toilet for
11 Mr. Garza's cell. Let me ask you this: Do you see
12 any toothpaste or toothbrush in his sink?

13 A. No.

14 Q. I want you to look very closely. Do you
15 see that?

16 A. No.

17 Q. So if that is your testimony, there is no
18 evidence of that in that picture?

19 A. If you look on the desk, there is some
20 toothpaste on the desk with the cap off.

21 Q. If there is no evidence of that, you don't
22 see any evidence of that in that picture; is that
23 correct?

24 A. No.

25 Q. And my question was: Do you see any

1 left-over toothpaste or toothbrush?

2 A. When was --

3 Q. Do you see that?

4 A. I don't see it.

5 Q. Okay. If we could pull up Government's
6 Exhibit 33.

7 Now, Mr. Martinez, this is a picture of
8 Mr. Garza's body. He's flipped over onto his back.
9 But you also see a picture of his bed and his
10 pillow. Do you see that?

11 A. Correct.

12 Q. Do you -- I want to you look into the
13 picture. Do you see any toothpaste residue on his
14 pillow?

15 A. No.

16 Q. Could we go to Defendants' Exhibit BX-15,
17 please?

18 Now, Mr. Martinez, this is a close-up of
19 Mr. Garza's face. Do you see any toothpaste residue
20 in his mouth?

21 A. No.

22 Q. You don't see any white toothpaste
23 residue?

24 A. No. As they were walking in, he was
25 finished brushing his teeth and rinsing his mouth.

1 Q. My question is: Do you see it,
2 Mr. Martinez?

3 A. No.

4 Q. You don't see it on his cheeks?

5 A. No.

6 Q. You don't see it in his mouth?

7 A. No, he rinsed his mouth.

8 Q. Do you see it on his chin? Do you see
9 that in the picture?

10 A. No.

11 Q. Could we go to Defendants' Exhibit BX-14.

12 Now, that is a close-up of the pillow.

13 Same pillow. Do you see any toothpaste residue
14 there?

15 A. No.

16 Q. Now, you also stated that a laundry bag
17 was the weapon that was used to choke Mr. Garza.

18 A. Correct.

19 Q. Can we go to Government's Exhibit 49?

20 Mr. Martinez, does that look like a
21 laundry bag to you?

22 A. Definitely not.

23 Q. A laundry bag was never found.

24 A. It would be the murder weapon.

25 Q. This was found in the pod; not a laundry

1 bag.

2 A. That was found in the cell.

3 Q. That was found in the cell; correct. Not
4 a laundry bag; isn't that right?

5 A. Correct.

6 Q. Can we go to Government's Exhibit -- oh,
7 shoot. One second.

8 MR. GRANBERG: Your Honor, may I have a
9 moment?

10 THE COURT: You may.

11 BY MR. GRANBERG:

12 Q. Now, this had already been admitted with
13 one of the Government's exhibits. I don't remember
14 which number it was, but this is a close-up of a
15 ligature mark on Mr. Garza's throat. Do you see the
16 lines that are across his throat?

17 A. Kind of. I see, like, bruising.

18 Q. Are those lines skinny or are they thick?

19 A. Kind of thin.

20 Q. Thank you. Are those thin lines more
21 consistent with the shoelace or a laundry bag?

22 A. The laundry bag is mesh. And there is
23 thin -- it's like mesh, and there are little thin
24 strands that run through it. It could cause all
25 them, so many different lines.

1 Q. But you only see thin lines across his
2 throat; isn't that correct, Mr. Martinez?

3 A. There was a few lines.

4 Q. So yesterday when you first started your
5 direct examination, one of the first things you said
6 was that you were living in O-2, pod O-2; is that
7 right?

8 A. Yes.

9 Q. And then you requested a transfer to a
10 different pod because you were due to be discharged
11 fairly soon, but you kept testing positive for
12 drugs, and that kept kind of eliminating any of your
13 good time so you could get out sooner. Is that fair
14 to say?

15 A. Yes.

16 Q. So when you wanted to move, how did you go
17 about starting that process?

18 A. I just put a request form. You get an
19 inmate request form, take it down to the Captain's
20 office, and you ask for a transfer. He asked me,
21 "Is everything all right? You're all good?"

22 I said, "No, everything is good, I just
23 want to move to another pod." And they moved me --
24 or they moved me.

25 Q. So basically, you asked the CO, and they

1 basically put it in motion for you; right?

2 A. Yes.

3 Q. So were the CO's being -- I don't want to
4 use any curse words, but they were being nice to you
5 in letting you move; correct?

6 A. They allowed it.

7 Q. They were taking care of you; right?

8 A. It got taken care of.

9 Q. But they could have chose not to; right?

10 A. Correct.

11 Q. So in November -- I'm sorry. Let me
12 rephrase this question here. So you stated that
13 Mr. Chavez had a beef with Mr. Garza over some
14 tennis shoes; right?

15 A. Yeah, there was a little tension between
16 them.

17 Q. And that because of this, Mr. Chavez went
18 in PC?

19 A. There was a few times that he did,
20 wherever Garza was at, or he went to the South and
21 checked it in, put an enemy list.

22 Q. Were you present when these shoes were
23 taken?

24 A. I wasn't.

25 Q. Okay. But it was generally known that

1 there was a beef between the two?

2 A. Mr. Chavez spoke to me himself and told
3 me --

4 Q. Mr. Martinez, was it generally known that
5 there was a beef between the two?

6 A. I didn't know nothing about it till Chris
7 Chavez told me. Because the story came up about the
8 shoes getting stolen from me, and that I stood up
9 for myself and took care of it. And then he came
10 and told me about his situation when he was in jail.

11 Q. So you mentioned PC. What is PC again?

12 A. Just asking for involuntary -- asking for
13 voluntary protection to tell them, "Lock me down. I
14 don't feel safe. I'm scared. Put me in protective
15 custody."

16 Q. Protective custody, the acronym PC; right?

17 A. Right.

18 Q. And what is the penalty for an SNM member
19 to request PC?

20 A. At that time he wasn't SNM. Chris Chavez
21 wasn't SNM.

22 Q. My question was: What was the penalty for
23 requesting PC?

24 A. You would just get iced. I mean, it
25 wasn't a situation to get killed, unless there was

1 really something big behind it. If you just get PC,
2 you'd probably get beat up, jumped, but just put on
3 ice.

4 Q. When you request PC, do you also go
5 through a CO, corrections officer?

6 A. Correct.

7 Q. And does the -- are you familiar with the
8 term STIU?

9 A. That's something new to me, but I know
10 what it means now.

11 Q. Or I believe it may have been referred to
12 previously as STG?

13 A. Yes.

14 Q. Okay. So do they get involved whenever
15 there's a PC request?

16 A. They do, but at that time there wasn't
17 really STG in place. This was quite a while back.

18 Q. But do they get involved?

19 A. They'll look into it.

20 Q. And is it considered a big thing when you
21 request PC?

22 A. No.

23 Q. It's not a big thing?

24 A. They just ask you what's wrong. And he
25 just says, "I'm scared, I'm afraid, and I don't want

1 to be here," and they'll lock you up without
2 incident.

3 MR. GRANBERG: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. GRANBERG:

6 Q. What does this say right here?

7 MR. CASTELLANO: I'm going to object to
8 him reading from a report. Hearsay.

9 THE COURT: Don't read it out loud.

10 BY MR. GRANBERG:

11 Q. Well, let me rephrase the question. Is
12 the inmate requesting protective custody?

13 A. Not right there, not on that page.

14 Q. How about here?

15 A. No.

16 MR. CASTELLANO: Objection, Your Honor.

17 He's just --

18 THE COURT: Sustained. You can't do that.

19 BY MR. GRANBERG:

20 Q. Is the inmate requesting protective
21 custody here?

22 MR. CASTELLANO: Objection.

23 THE COURT: Sustained. Sustained. This
24 is inappropriate.

25

1 BY MR. GRANBERG:

2 Q. You also stated yesterday that after you
3 were arrested, a few of you, a few of the defendants
4 were being housed at the Torrance Detention Center;
5 right?

6 A. Correct.

7 Q. Do you remember Torrance?

8 A. Yes.

9 Q. And I remember you saying yesterday that
10 everybody was all tense and anxious. Is that fair
11 to say?

12 A. Yes.

13 Q. Tensions were high because people were
14 already starting to cooperate when you pled; is that
15 correct?

16 A. Were they what?

17 Q. People were starting to cooperate with the
18 Government at that point; is that correct?

19 A. Yes.

20 Q. And you stated yesterday that it's
21 dangerous to cooperate; isn't that right?

22 A. Yes.

23 Q. Because if people find out that you're
24 cooperating, you're likely to be killed?

25 A. Yes.

1 Q. So you're saying that you had a
2 conversation with Chris Chavez; right?

3 A. Correct.

4 Q. And you stated yesterday that you knew
5 Chris Chavez, but the two of you were not close;
6 correct?

7 A. Right.

8 Q. But the two of you did share a common
9 interest in drawing; right?

10 A. Correct.

11 Q. And everybody knows that the first step to
12 becoming a snitch and cooperating is pleading
13 guilty; correct?

14 A. Correct.

15 Q. That's what happened in your case; right?

16 A. Correct.

17 Q. You entered your plea, you got a plea
18 agreement with the 5K language; correct?

19 A. Correct.

20 Q. And after that is when you started to
21 cooperate?

22 A. Correct.

23 Q. So Mr. Chavez told you this knowing that
24 it would make him a target, as well?

25 A. What did he tell me?

1 Q. Mr. Chavez told you about pleading guilty
2 and blaming it on others?

3 A. At that time, I wasn't cooperating.

4 Q. You were already back from the hospital;
5 right?

6 A. I was back from the hospital, but we were
7 just there waiting for court.

8 Q. So he told you this knowing that it would
9 paint a big target on his back; right?

10 A. This was a conversation amongst me and
11 him, and we share similar feelings about not being
12 involved with SNM no more, distancing ourselves. I
13 got out of prison and I stayed away for nine years.
14 And we discussed that. And he was in that mind
15 frame of trying to pull away.

16 Q. So Mr. Martinez, according to you --
17 according to your account, Mr. Chavez' plan was to
18 plead guilty, cooperate, and blame some other
19 people; is that correct?

20 A. Correct.

21 Q. But isn't that exactly what you're doing
22 here?

23 A. No, because the people --

24 Q. Isn't that exactly what you're doing here?

25 A. These are the people that helped and were

1 involved in the murder.

2 Q. You decided to plead guilty; correct?

3 A. Yes.

4 Q. You decided to cooperate; correct?

5 A. Correct.

6 Q. And you're deciding to pull in other
7 people; isn't that correct?

8 A. The people that were involved.

9 Q. And you know, Mr. Martinez, that sounds
10 eerily similar to the story about the tennis shoes;
11 isn't that right?

12 A. No.

13 Q. Well, let me rephrase the question. You
14 had an incident with a Los Carnales Gang member,
15 where they took your shoes; is that right?

16 A. Yes.

17 Q. And you stood up for yourself, but there
18 was some tension and animosity because of the
19 incident; right?

20 A. Yes.

21 Q. Isn't that the same story that you're just
22 transferring for Mr. Chavez? Isn't that essentially
23 the same story?

24 A. That's what he told me.

25 Q. Isn't that essentially the same story?

1 A. He told me he got bulldogged for his
2 shoes.

3 Q. Isn't that essentially the same story,
4 Mr. Martinez?

5 A. No.

6 MR. GRANBERG: Pass the witness.

7 THE COURT: Thank you, Mr. Granberg.

8 Any other defendants have
9 cross-examination of Mr. Martinez?

10 All right. Mr. Castellano, do you have
11 redirect of Mr. Martinez?

12 MR. CASTELLANO: Yes, Your Honor. Thank
13 you.

14 THE COURT: Mr. Castellano.

15 REDIRECT EXAMINATION

16 BY MR. CASTELLANO:

17 Q. Mr. Martinez, going back to the statements
18 that Christopher Chavez told you, isn't there a
19 difference between what his plan was and what you
20 did in terms of who you were going to name as
21 people?

22 A. Correct.

23 Q. Who did Chris Chavez want to put these
24 murders on?

25 A. Two people that made a statement on him,

1 when the investigation started.

2 Q. Were those statements you came across on
3 the tablets?

4 A. Yes.

5 Q. And so is that different from what you're
6 doing today before this jury, in terms of telling
7 them who actually committed these murders?

8 A. Yes.

9 Q. Including yourself?

10 A. Yes.

11 Q. Now, you were asked about the timing of
12 your cooperation, and you talked about the
13 competency evaluation. Do you remember that?

14 A. Yes.

15 Q. So when you first got arrested, did an
16 agency called Pretrial Services do a background into
17 your criminal history and things of that nature?

18 A. I think so, but I can't recall.

19 Q. And that was for the purposes of
20 determining whether or not you could be released or
21 detained pending trial?

22 A. Yes. I knew they were doing something
23 like that.

24 Q. As a part of that evaluation, is that when
25 your history of the competency evaluation before

1 came up?

2 A. Yes.

3 Q. So are you the person who filed a motion
4 with the Court?

5 A. No.

6 Q. Who filed that motion for you?

7 A. I think it was the lawyer, or --

8 Q. Okay. So knowing these things, did your
9 lawyer file a motion on your behalf to determine
10 your competency?

11 A. Yes.

12 Q. And then subsequent to that motion, did
13 the Court order you to be evaluated for competency?

14 A. Yes.

15 Q. And did you go through another evaluation
16 through someone else after the people in Los
17 Angeles?

18 A. Yes.

19 Q. Is that the one with Dr. Westfried?

20 A. Yes.

21 Q. And do you remember what he said about
22 your competency, what the conclusion was?

23 A. He said that I had problems. He went
24 over, investigated my history, and he said that -- I
25 kind of don't remember, but he said I did have

1 problems but I was able to be able to maybe take a
2 plea or -- I don't know, kind of --

3 Q. Do you remember a distinction between your
4 ability to understand everything that goes on in a
5 trial versus your ability for you to enter a guilty
6 plea?

7 A. Yes, sir.

8 MR. GRANBERG: Your Honor, I'm going to
9 object to leading questions.

10 THE COURT: Try not to lead.

11 BY MR. CASTELLANO:

12 Q. What do you recall about that,
13 Mr. Martinez?

14 A. What was the question again?

15 Q. What do you recall about his conclusion
16 about your ability to understand everything that
17 goes on in a trial versus your ability to plead
18 guilty?

19 A. Yeah, he said that I would have
20 complications sitting through a whole trial and
21 understanding some of the process.

22 Q. And did your Uncle Frank go to the
23 competency hearing?

24 A. Yes.

25 Q. And did he testify on your behalf?

1 A. Yes.

2 Q. Did I cross-examine him?

3 A. You did.

4 Q. And was he there to tell the Court
5 basically about part of your history growing up?

6 A. Yes, he did.

7 Q. Including any difficulties you may have
8 had growing up and in the school?

9 A. Yes.

10 Q. Was that information he gave to the Court?

11 Now, when you talk about the timeline, do
12 you recall when the Court actually entered an order
13 finding you competent? If you don't remember the
14 date, I can refresh your memory.

15 A. Yeah, I don't remember the date.

16 MR. CASTELLANO: May I approach, Your
17 Honor?

18 THE COURT: You may.

19 BY MR. CASTELLANO:

20 Q. I'm showing you a court document here,
21 Mr. Martinez. Okay. Do you see the date that it
22 was entered on the docket?

23 A. 05 --

24 Q. May 1st, 2017?

25 A. May 1st, 2017.

1 Q. And are you aware that this is the Court's
2 order with its finding ultimately finding you
3 competent to stand trial?

4 A. Yes, it is.

5 Q. So if it was May 1st, 2017, I think you
6 testified earlier that you really couldn't do
7 anything until the Court made a decision about your
8 competency; is that correct?

9 A. Correct.

10 Q. So could you enter into a plea if the
11 Court hadn't found you competent yet?

12 A. No.

13 Q. And so was everything basically waiting
14 for the Court to make a decision?

15 A. Yes, it was.

16 Q. And then after the Court found you
17 competent on May 1st, did you then agree to sit down
18 with the Government and cooperate?

19 A. I did.

20 Q. And as a matter of fact, it was just
21 within a few days? Do you remember that, your
22 debriefs in May of 2017?

23 A. Yes.

24 Q. And Government's Exhibit 105 was your
25 guilty plea from May 5th of 2017. Do you recall

1 that, sir?

2 A. Yes.

3 Q. And do you remember what you agreed to in
4 the factual basis regarding Billy Garcia? Do you
5 remember specifically?

6 A. What I agreed to?

7 Q. Yes.

8 A. To testify.

9 Q. Do you remember what you said about him in
10 the plea agreement on that date?

11 A. Oh, yes.

12 Q. What was it?

13 A. That he pulled up in March, during March
14 2001, and that everything went -- the murders
15 happened. He pulled up, and everyone was freaked
16 out, and got scared, and it turned into a ghost
17 town, and ordered the hits.

18 Q. Let me -- would it help to refresh your
19 recollection to look at your factual basis?

20 A. Yeah.

21 MR. CASTELLANO: May I approach, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. CASTELLANO:

25 Q. Sir, I'm going to show you an unredacted

1 version of your plea agreement to refresh your
2 memory. And as part of your agreement -- I'll have
3 you review that to yourself quietly.

4 A. Yes.

5 Q. I'll have you continue reading the whole
6 thing.

7 A. Yes.

8 Q. Sir, does that refresh your recollection
9 about what happened at your plea hearing?

10 A. Yes.

11 Q. So what do you remember having to say
12 about Billy Garcia at that time?

13 A. Just that he pulled up in 2001. And
14 everyone started getting scared and not coming out
15 of the compound. And I was approached by Leonard
16 Lujan.

17 MR. COOPER: Your Honor --

18 THE COURT: Hold on.

19 MR. COOPER: Never mind, Your Honor. I
20 was going to make an objection, but I'll withhold
21 it. Thank you.

22 THE COURT: Go ahead.

23 A. I was approached by Leonard, and he told
24 me that there was an order from Billy --

25 MR. COOPER: Objection, Your Honor. May

1 we approach?

2 THE COURT: You may.

3 (The following proceedings were held at
4 the bench.)

5 MR. COOPER: That is not what he said in
6 the plea agreement. I would move to strike that
7 last -- the entire last bit of testimony, and I
8 would ask that Mr. Castellano read what he said.
9 It's one sentence.

10 MR. CASTELLANO: I can lead him through
11 that, Your Honor, because I think he's confused
12 between what he knew and what he said at the plea
13 hearing. That's fine.

14 THE COURT: What is it that you want
15 struck? Where he was approached by Leonard --

16 MR. COOPER: And Leonard said that
17 Billy --

18 THE COURT: -- "told me there was an order
19 from Billy"?

20 MR. COOPER: I think in response to the
21 question, the only thing that he should have said
22 is, in 2001, Billy Garcia, also known as Wild Bill,
23 arrived at SNMCF, and people began to worry about
24 what might happen next. That's it.

25 MR. CASTELLANO: I can lead him through

1 that, Your Honor. I agree.

2 THE COURT: I'll just tell them to
3 ignore -- disregard the last sentence of his
4 testimony.

5 (The following proceedings were held in
6 open court.)

7 THE COURT: All right. The very last
8 sentence that Mr. Martinez testified about, just
9 ignore that, and I'll strike that from the record,
10 and you're not to consider that portion.

11 Mr. Castellano.

12 MR. CASTELLANO: Thank you, Your Honor.

13 BY MR. CASTELLANO:

14 Q. And Mr. Martinez, I want to distinguish
15 between what you told the FBI in November and
16 what --

17 MR. COOPER: Objection, Your Honor.
18 Assuming facts not in evidence.

19 THE COURT: Let's not lead with that sort
20 of comment. Let's just ask your question.

21 BY MR. CASTELLANO:

22 Q. Okay. Let's focus on your plea first.
23 Okay?

24 A. All right.

25 Q. So on the day of your plea, what you

1 agreed was that in 2001, Billy Garcia arrived at
2 Southern and people began to worry about what might
3 happen next?

4 A. Yes.

5 Q. That's all you had to say on that
6 occasion?

7 A. Yes.

8 Q. And then after he arrived, what do you
9 recall about Leonard Lujan approaching you?

10 A. He just approached me and told me that
11 this prison was his now, and after lockdown, after
12 we get off of lockdown, everyone is going to answer
13 to him; this is his pinta. And he said, "Go in
14 there and handle that. Go in there to handle
15 Looney. Go in there."

16 Q. For purposes of your plea on that date,
17 what you stated was that Leonard Lujan approached
18 you and advised you to tell two other people to
19 handle that; correct?

20 A. Yes.

21 Q. Did you agree on that day that you had
22 agreed with Christopher Chavez and Allen Patterson
23 to kill Rolando Garza?

24 A. I agreed; me and Chris Chavez. It was
25 just up in the air, like, we were just trying to

1 figure out -- on the 25th, it was like we were just
2 trying to figure out how it was going to go down.

3 Q. But ultimately, when it went down, who did
4 you help when Rolando Garza was killed?

5 A. Chris Chavez and Allen Patterson.

6 Q. Now, you were asked about your debriefs.
7 So let's turn to what you told the FBI in November
8 of 2017. You were asked about that. At that time
9 did you state why you had not mentioned more about
10 Billy Garcia before that time?

11 A. Because I was just in fear. I lived next
12 to him, and I just know how powerful he is, and I
13 know people, they'll go out and kill for him, and I
14 just wanted at all costs not to mention his name,
15 just out of fear of retaliation.

16 Q. And is what you told the jury true about
17 going to talk to Billy Garcia after you spoke to
18 Leonard Lujan?

19 A. Yes.

20 Q. And what did Billy Garcia tell you?

21 A. He said, "Yes, I told -- Leonard just
22 approached me, Leonard just approached me about
23 handling this in the morning."

24 "Handling it?"

25 "Handling it in the morning."

1 And I said, "Si or no?"

2 And he said, "Simon."

3 That was it. And then he asked me how I
4 was doing.

5 I said, "All right." I told him, "I'm
6 getting out in four months."

7 He said, "All right. You guys be
8 careful."

9 That was it.

10 Q. Do you recall if he told you to go talk to
11 anybody else about what was going to happen?

12 A. To Willie Amador.

13 Q. And what else did he tell you about
14 confirming whether or not it came from him?

15 A. Yeah, I knew it came from him. I walked
16 over there and talked to him.

17 Q. Was it at that time, following that
18 conversation, that you went and spoke to Willie
19 Amador?

20 A. Yes.

21 Q. Then did Willie Amador also become part of
22 this scheme after you talked to him and he went and
23 talked to somebody else?

24 A. Yes.

25 Q. And you mentioned the comment about the

1 facility becoming a ghost town. You mentioned
2 certain people either checked in or tried to. Do
3 you remember that?

4 A. Yes.

5 Q. Do you remember in November of 2017 giving
6 the FBI some names of people who had done things
7 like that?

8 A. Yes.

9 Q. Do you remember who you said?

10 A. I said Larry Gutierrez. He's from
11 Southwest Locos. He's an SNM member. Toby Romero
12 was one of them. He left. Jo Jo, Fred Quintana,
13 was there and as soon as he heard Billy was there,
14 he was gone.

15 The STGs came out. They were aware of
16 Pancho and Looney having the hit on them, and they
17 were even warned by -- you know, by the cops that,
18 "Hey, there's" -- and they said, "Oh, no, we're all
19 good." So there was several hits on people and if
20 they would have stayed there, they would have all
21 got taken out.

22 Q. Let me ask you about what you said about
23 Larry Gutierrez. Do you recall whether or not there
24 was a green light on him?

25 A. There was a green light on him.

1 Q. And at that point had he been assaulted?

2 A. Huh?

3 Q. At that point had he been assaulted before
4 he checked it in?

5 A. No.

6 MR. COOPER: Objection, hearsay.

7 THE COURT: Well, why don't you lay some
8 foundation to see if he got this information from
9 any other --

10 BY MR. CASTELLANO:

11 Q. Were you aware of Larry Gutierrez being
12 assaulted?

13 A. I never knew him getting assaulted.

14 THE COURT: Well, then I'll strike the
15 testimony that -- the prior answer. So I'll strike
16 it, and the jury will not consider it in its
17 deliberations.

18 Q. Let me rephrase that to make sure you're
19 understanding. Were you aware of a green light on
20 him?

21 A. Yes.

22 Q. And as a result of a green light, did you
23 see him get assaulted?

24 A. I never seen him get assaulted.

25 Q. And then once Billy Garcia arrived, were

1 you aware of him checking it in or PC'ing?

2 A. Yes.

3 Q. You also mentioned on cross-examination
4 that Leroy Lucero was trying to save Garza?

5 A. Yes.

6 Q. Is that something you said for the first
7 time on the stand, or did you tell that to the FBI
8 in November of 2017?

9 A. I told that to the FBI.

10 Q. When your brother and father were killed,
11 did you know at that time that those people were Los
12 Carnales gang members?

13 A. No.

14 Q. When did you finally find that out?

15 A. Probably maybe like about five months
16 later.

17 Q. In addition to your hatred for them, was
18 it pretty much the responsibility of all SNM members
19 to hate the Los Carnales?

20 A. Yes.

21 Q. You told this jury about certain rules of
22 the gang. Were the rules always followed?

23 A. No.

24 Q. And what were ways that people got around
25 the rules?

1 A. Sometimes they would -- like, if there was
2 hits on someone, there could be -- they could have
3 money and dope and they can live in a prison. As
4 long as they're paying rent and there's drugs,
5 they'll let them stay, or people will try -- if
6 there's hits and people are supposed to go on them,
7 they'll assault a CO or do something just to go to
8 lockup so they don't have to carry out the hit, and
9 they'll avoid it in a way where it doesn't look like
10 they're checking it in, and they try to sneak away
11 without doing the hit.

12 Q. Do politics also play a part in the gang
13 and people having favorites?

14 A. Oh, yeah.

15 Q. So as a result of being in politics in the
16 gang and having favorites, are the rules sometimes
17 overlooked?

18 A. Yes.

19 Q. When the FBI talked to you on the date of
20 your arrest on December 3 of 2015, do you remember
21 that?

22 A. Yes.

23 Q. How did that day start for you? What
24 happened?

25 A. On the 3rd?

1 Q. Yes.

2 A. They came and kicked in my door and pulled
3 me and my wife out and arrested me.

4 Q. So did your day start with a SWAT team
5 hitting your house?

6 A. Started with a concussion bomb and guns.

7 Q. So was that a peaceful way to begin your
8 day?

9 A. No. I was just distraught -- it was early
10 in the morning -- confused.

11 Q. What was one of the first things you said
12 to the FBI when they started questioning you about
13 giving information to them; do you remember?

14 A. I think it was that I didn't want -- I
15 didn't -- about getting killed or hurt.

16 MR. CASTELLANO: May I approach the
17 witness, Your Honor?

18 THE COURT: You may.

19 BY MR. CASTELLANO:

20 Q. Let me have you review this to yourself,
21 and I'll ask you what you -- if that refreshes your
22 memory, for starters.

23 A. I didn't want to get killed.

24 Q. So is that something you told to them
25 early in the conversation?

1 A. Immediately.

2 Q. Why did you say something like that?

3 A. Because I know if you cooperate, once you
4 start cooperating, you're dead, sooner or later. It
5 could happen in a year; it could take 10 years; 15
6 years. But you'll end up dead.

7 Q. Isn't it true you also denied that you had
8 even ever joined the SNM?

9 A. Yes.

10 Q. Was that true?

11 A. It's true that I denied it.

12 Q. Did you want to admit to the FBI that
13 morning that you had any ties to the SNM Gang?

14 A. No, I didn't want to admit it.

15 Q. At some point did the agent asking
16 questions of you bring up the names Leonard Lujan
17 and Billy Garcia?

18 A. Yes.

19 Q. What did you think about that when those
20 names came up?

21 A. I automatically kind of clammed up,
22 tightened up, and I really didn't want to speak of
23 their names, because then that would tie me in to
24 the murder.

25 Q. So did you do what you could to deny

1 really being involved in it?

2 A. Yeah. I kind of just like, oh, I don't
3 know, I know a few Leonards, I know some Billys.
4 But I didn't really want to say that I was -- know
5 them, you know.

6 Q. When you talked to the FBI the very first
7 morning you were arrested, did you intend to
8 cooperate and tell them everything you knew?

9 A. No.

10 Q. I may have asked you this, but what time
11 did they come knocking on your door?

12 A. I'm not exactly, but it was anywhere in
13 between 4:00 and 5:00 in the morning.

14 Q. Do you think your Uncle Frank has
15 political pull with our office?

16 A. No.

17 Q. Do you know how much your Uncle Frank and
18 I ever even worked together?

19 A. I don't.

20 Q. Other than that, did you know that we knew
21 each other?

22 A. I just knew you recognized his name, and
23 you said you knew him, but I didn't know the history
24 or what.

25 Q. Defense attorneys made some calls for you.

1 Do you remember those conversations --

2 A. Yes.

3 Q. -- conversations with family?

4 A. Yes.

5 Q. Now, in a couple of those conversations,
6 do you recall that you said you might even get some
7 time?

8 A. Yes.

9 Q. And you mentioned two places, Arizona and
10 Florida. What's in those places?

11 A. They're prisons where they hold
12 cooperators for, like, WITSEC programs.

13 Q. Why would you be discussing prison with
14 family, if you were going to get a time served or a
15 probation sentence?

16 A. I don't know. I just figured I would get
17 prison time. I don't know why I did. I don't know.

18 Q. Obviously, are you hoping to get a
19 reduction in your sentence?

20 A. I hope and I pray that I get one.

21 Q. As a matter of fact, you said in one of
22 them you hope and you pray that you'll be able to go
23 home.

24 A. On my phone call?

25 Q. Yeah, and in your testimony, is that what

1 you really hope happens?

2 A. Oh, yes.

3 Q. Did you even testify at your competency
4 hearing?

5 A. No.

6 Q. What promises have been made to you about
7 the sentence you receive in this case?

8 A. No promises have been made.

9 Q. Why would you tell your family members
10 that there is a good possibility you'd get probation
11 or time served?

12 A. Because I was explaining that there's
13 chances of -- I signed for life, and if I could get
14 a letter, a 5K1, and then have that 20-year cap,
15 there's, like, you could get time served. But I
16 would tell them that just to not get my wife down,
17 or my family, try to, like -- just didn't want to
18 bother them and make them think that I'm going away
19 forever.

20 Q. And are you aware that if the motion is
21 filed on your behalf, that the judge could do that
22 for you?

23 A. It's up to the judge to do whatever he
24 wants.

25 Q. But in that same conversation, do you

1 recall when you told your Uncle Frank and your Aunt
2 Rose that you would be 100 percent honest with them?

3 A. Yes.

4 Q. Is that your intent?

5 A. Yes.

6 Q. Do you also recall that they told you they
7 were proud of you --

8 A. Yes.

9 Q. -- of what you were doing? And would they
10 be proud of you if you took the stand and lied to
11 this jury?

12 A. No.

13 Q. You were asked about how you've been
14 treated so far. Have you been treated fairly?

15 A. Yes.

16 Q. And even though you've been treated
17 fairly, do you still have some distrust issues with
18 the Government?

19 A. Definitely.

20 Q. Is that based on your prior experiences in
21 the criminal justice system?

22 A. Yes.

23 Q. Did you get some assurances from your
24 Uncle Frank that the Government would keep its word
25 to you?

1 A. Yeah, he told me.

2 Q. Now, when you were at MDC getting
3 evaluated, did you have a lawyer with you?

4 A. No.

5 Q. Was it just you over there?

6 A. I was by myself.

7 Q. And remind us what your situation was with
8 even having a lawyer at all at that time. You
9 mentioned having three lawyers.

10 A. Yes, well, when I first got arrested, I
11 had one lawyer. And it was another judge, and I
12 think he disqualified him and said that he didn't
13 have enough -- I guess he wasn't trained enough to
14 handle this case.

15 And the judge was aware of my incompetency
16 hearing, so he was kind of discussing that, and he
17 got me another lawyer, Robert Gorence. And during
18 this process, the judge made an order for a
19 competency hearing. And then there was a legal
20 issue amongst the lawyer representing another
21 defendant in another case, and it was a conflict of
22 interest.

23 So as I was leaving, they fired Robert
24 Gorence. Not fired him. Let him go. So for a
25 while I didn't have no lawyer. I didn't know who my

1 lawyer was till one day I could talk to my wife when
2 I was in California, and she said: You got a new
3 lawyer. His name is Doug, or whatever, and let me
4 know. That was already -- I was already a month and
5 a half into my stay at California.

6 Q. Okay. So a few months into this case, did
7 you know really who to seek counsel from?

8 A. Not really. I was a little confused.

9 Q. And you were asked about WITSEC, or
10 witness security. Do you remember that?

11 A. I did. Several times.

12 Q. And why would you need to be protected?

13 A. Because if I go into the prison system,
14 it's just dangerous, especially in the federal
15 system, and my chances of getting killed are higher.

16 Q. And if you go to one of these other
17 prisons, is it a prison where other people have
18 cooperated with the Government?

19 A. Yes.

20 Q. And you feel that would be a safer place
21 for you?

22 A. Yes.

23 Q. Now, you talked about getting money and
24 things of that nature. Are you aware of whether or
25 not you could get money to relocate you and your

1 family?

2 A. I don't know if they'll actually give me
3 money, but they may, like, help you a little bit
4 to -- yeah, just to relocate or put you in another
5 place.

6 Q. And in Exhibit BX-1, which is a phone call
7 played for you, you talked about getting help for a
8 move and getting a job and doing better?

9 A. Yes.

10 Q. Is that what you hope to do some day?

11 A. Yes.

12 Q. I want to show you Government's Exhibits
13 83 and 591, possibly side by side on the monitor.

14 It was pointed out to you the date the
15 photo was taken, I think was around -- on the right
16 side of Exhibit 591.

17 A. March 1st -- no, March 16, 2001.

18 Q. Can you zoom in possibly on the right side
19 of Exhibit 519, the portion showing the date here?
20 Okay. On March 16, 2001. Thank you.

21 So on Exhibit 83, which is Billy Garcia's
22 location history, are you aware of when he was in
23 orientation?

24 A. Yes.

25 Q. When was that? Actually, let me ask you

1 from March 8, 2001, to March 20, 2001, he was in
2 SL-2, green pod 1174?

3 A. Yes.

4 Q. Do you know if that's part of the
5 orientation process?

6 A. I think that's part of the orientation
7 process.

8 Q. Okay. So he was released -- if that's the
9 case, he was released from orientation four days
10 after this photo was taken; would that be fair to
11 say?

12 A. Yes.

13 Q. Then once again reflecting on that
14 exhibit, do you see where he arrived at the Southern
15 New Mexico Correctional Facility on March 8, 2001?

16 A. Yes.

17 Q. Eighteen days before the murder?

18 A. Okay.

19 Q. Do you recall that being about the right
20 timeframe, but him not getting out of orientation
21 until possibly six days before the murder?

22 A. Yes. He stayed in orientation for -- you
23 stay there for a period, and it varies.

24 Q. When you were facing the state charges
25 that were dismissed for lack of competency, do you

1 remember how many felony convictions you had before
2 that time? Not arrests, but convictions?

3 A. I only had one conviction.

4 Q. So are you aware of the state habitual
5 offender statute?

6 MR. COOPER: Objection, leading.

7 THE COURT: Don't lead.

8 Let me talk to the jury, Mr. Castellano, a
9 little bit about a break and lunch plans.

10 What would the jury like to do today?
11 Would you like to take a 15-minute break now and
12 work through the lunch hour and have a late lunch?
13 How many are in favor of that? All right.

14 Does that work for the attorneys and the
15 parties?

16 MR. CASTELLANO: Yes, Your Honor.

17 THE COURT: Why don't we take a 15-minute
18 break now and work through the lunch hour and take a
19 little later lunch. All rise.

20 (The jury left the courtroom.)

21 THE COURT: All right. We'll be in recess
22 for about 15 minutes.

23 (The Court stood in recess.)

24 THE COURT: All right. I think we have
25 all the defendants in the courtroom, and each

1 defendant has a lawyer.

2 Anything we need to discuss before we
3 bring the jury in, Mr. Castellano?

4 MR. CASTELLANO: No, Your Honor.

5 THE COURT: How about from the defendants?
6 Anything to discuss?

7 MS. ARMIJO: Your Honor, just maybe some
8 logistics about the next witness, but it's not
9 urgent. We can approach or something.

10 THE COURT: Go ahead.

11 MS. ARMIJO: So the next witness will be
12 Angela Gallegos, and for that witness, we do want
13 the American Rule when we put her on. But I believe
14 we've agreed that the defense will then go ahead and
15 take her out of order for their case, because of her
16 medical issue.

17 THE COURT: Okay.

18 MS. ARMIJO: Then at that point they'll
19 present what they want to, and it's mostly for being
20 able to lead and not lead. Does that make sense?
21 I'm sorry.

22 THE COURT: So you won't lead in yours,
23 and they won't lead in theirs.

24 MS. ARMIJO: For ours, yes. But we will
25 lead in our cross-examinations.

1 THE COURT: Okay.

2 MR. BENJAMIN: And I think we have that
3 agreement. It's just going to be flipped, Your
4 Honor. She's going to cross her and we'll direct
5 her, if that makes it easy and a little less
6 confusing.

7 MS. TORRACO: No, that's not what's
8 happening. Ignore Mr. Benjamin, please.

9 THE COURT: All right. Maybe we can
10 approach when we get up, and make sure I'm clear on
11 it.

12 All rise.

13 (The jury entered the courtroom.)

14 THE COURT: All right. Everyone be
15 seated.

16 Mr. Martinez, I'll remind you that you're
17 still under oath.

18 Mr. Castellano, if you wish to continue
19 your redirect, you may do so at this time.

20 MR. CASTELLANO: Yes, sir. Thank you.

21 BY MR. CASTELLANO:

22 Q. Before the break you were talking about
23 the habitual offender statute under state law. Do
24 you remember that?

25 A. Yes.

1 Q. With one felony conviction, do you know
2 even how much your sentence could have been enhanced
3 under the state law?

4 A. I think they said maybe a year.

5 MR. COOPER: Objection, hearsay.

6 THE COURT: If it's coming from another
7 source, sustained.

8 BY MR. CASTELLANO:

9 Q. So in other words, with only one prior
10 felony conviction at that time, do you know if you
11 were subject to even eight years?

12 A. I don't think so.

13 Q. What is your definition of "bulldogging"?

14 A. Basically, just intimidating people. And
15 maybe they have drugs. This is what usually
16 happens. They go in and bulldog for drugs, and
17 demand and say you're going to -- if you're going to
18 be hitting, getting dope, you're going to give us an
19 issue. And if not, we'll take it. Or just going in
20 an aggressive, threatening manner. And sometimes,
21 every once in a while, you rough someone up, got
22 them by the neck and slap them or punch them or
23 something, and let them know that you're serious.
24 Q. So are there times when bulldogging does
25 not get physical?

1 A. More than often, it don't get physical.

2 Q. Then like you said, if you're requesting
3 or even demanding something from them, and they
4 don't give it to you, does it sometimes turn
5 physical?

6 A. No. But sometimes it does.

7 Q. And even back in 2001, what was the deal
8 with SNM and drugs in terms of whether or not people
9 had to pay a tax or give anything to the SNM?

10 A. Back then it was real heavy. There was a
11 lot of people that weren't SNM that they would get
12 drugs. There were so many SNM members that they
13 were scared, so they would basically get bulldogged
14 or give a cut. There was SNM members that were --
15 they were SNM members out of fear. And they didn't
16 want to get bulldogged, so they -- or they were
17 lured in and made SNM members. And basically, they
18 would be rats, child molesters, whatever. But if
19 they had money and drugs, they were able to pay
20 their way. Depending on who is there, the
21 shot-callers that were there were just focused on
22 getting high, and so all these people that had hits
23 on them, they were allowed to stay on the line
24 because they had drugs and money. But if the right
25 person pulls up -- or the wrong person pulls up that

1 doesn't care about the drugs, it's over, and that's
2 what happened.

3 Q. And isn't it a rule of the SNM that the
4 SNM will not allow sex offenders to be members?

5 A. It's supposed to be a rule.

6 Q. So you said it's supposed to be rule. Are
7 there exceptions to that rule? Like you said, if
8 someone has drugs or other things?

9 A. Yes, it's been -- it's happened.

10 Q. You were asked whether or not you and
11 Leonard Lujan agreed to act crazy to escape the
12 charges. Do you remember that?

13 A. I didn't agree on nothing with him.

14 Q. Are you aware of whether or not Leonard
15 Lujan went through a competency evaluation?

16 A. I don't.

17 Q. You were also asked about a statement
18 where someone claims you and Angel DeLeon killed
19 Mr. Garza.

20 A. Yes.

21 Q. And was Mr. DeLeon in your pod?

22 A. No.

23 Q. And do you know if Mr. DeLeon was alleged
24 to have killed Mr. Castillo and not Mr. Garza?

25 A. I know that he's a suspect for killing

1 Castillo, but I don't know if he did or what.

2 Q. Let me show you Government's Exhibit 49,
3 which looks like maybe a couple of shoelaces tied
4 together?

5 A. Yes.

6 Q. Do you recognize that exhibit?

7 A. No.

8 Q. Is that the murder weapon in this case?

9 A. No.

10 Q. Do you know what happened to the murder
11 weapon?

12 A. I don't know what happened to it, but I
13 know that that is not the murder weapon.

14 Q. What was used to kill Mr. Garza?

15 A. A mesh laundry bag.

16 Q. Do you know if that was ever recovered
17 from the pod?

18 A. It was never recovered.

19 Q. You were also asked about him brushing his
20 teeth and things of that nature?

21 A. He was -- yeah.

22 Q. Where was Mr. Garza when you last saw him?

23 A. He was standing up. He was already
24 like -- he rinsed his mouth and he was just right
25 there in front of the sink. The last time I seen

1 him?

2 Q. The very last time you saw him.

3 A. Was on the bed.

4 Q. And did you put him in that bed?

5 A. Not -- I didn't put him on the bed, but I
6 got on the bed, and he got slammed down to the bed.

7 Q. Did you cover him with any covers or
8 anything like that?

9 A. No.

10 Q. You were also asked, when you moved from
11 housing unit O-2 to O-1 -- was that simply by making
12 the request of the corrections officers?

13 A. Yes.

14 Q. How long was it that you were away from
15 the SNM before you got arrested and this murder
16 caught up to you?

17 A. Nine and a half years, almost 10 years.

18 MR. CASTELLANO: I have no further
19 questions, Your Honor.

20 THE COURT: Thank you, Mr. Castellano.

21 All right. Mr. Martinez.

22 Do you have something further, Mr. Cooper?

23 MR. COOPER: I do, Your Honor, if I may.

24 THE COURT: Go ahead, Mr. Cooper.

25

25 | A. No, you don't put your hands on -- you

1 take care of your own people.

2 Q. So when you say that the place became a
3 ghost town -- strike that. So of the four that you
4 know of, you named three. Who is the fourth?

5 A. I just told you that I can't recall the
6 fourth person.

7 Q. Okay. So could it have been just three
8 SNM members?

9 A. I can't recall. There was other people
10 that didn't check it in that stayed on the line,
11 that some were allowed a pass.

12 Q. But you said that four people checked it
13 in because they felt they might be hit, and you've
14 identified only three. There were green lights on
15 other people, I presume?

16 A. Oh, yeah.

17 Q. And in fact on, in fact, Mr. Castillo and
18 Mr. Garza, there had been green lights for a long
19 time on them?

20 A. A long time.

21 Q. And everybody knew there was green lights
22 on them. And if the green light is already there,
23 you don't need anybody to bring word to carry out
24 the green light, do you?

25 A. You could avoid it.

1 Q. You could avoid it?

2 A. Yep.

3 Q. But you don't have to bring -- I guess
4 what I'm saying is: Once the green light is put on
5 somebody, it's already been confirmed, everybody
6 knows, and the green light means it's okay to kill
7 them?

8 A. It's supposed to be like that. But rules
9 are bent.

10 Q. Okay. And sometimes if there is a red
11 light -- sometimes a leader will put a red light on?

12 A. Yes.

13 Q. And when that leader leaves, the green
14 light comes back on; correct?

15 A. It depends. When the leader leaves, it
16 depends who is the next leader. If he likes drugs
17 and money, and he don't care to hang out with a
18 rapist or a child molester, the red light will
19 stand.

20 Q. But he doesn't make an announcement.
21 There is not something put out over a loud speaker,
22 "Okay, red light still in place"?

23 A. No. He just says to a few guys, "Hey, the
24 prison is calm, we're getting visits, we're out, we
25 have movement. If we kill this guy, we're going to

1 be on lockdown. We're going to be through." So
2 some people are trying to stay out of population and
3 do good.

4 Q. But you don't know that those
5 conversations were ever had with regard to Garza and
6 Castillo, do you?

7 A. I've heard whispers -- not whispers, but
8 people saying just to leave it as a red light.

9 Q. But those are soldiers talking?

10 A. Yes.

11 Q. And the soldiers don't make the -- they
12 don't make that decision; right?

13 A. Right.

14 Q. Jo Jo Quintana -- what's his real name?
15 Is it Jo Jo Fred Quintana?

16 A. Yes.

17 Q. And that's the guy who checked it in?

18 A. Yeah, he checked it in a little bit before
19 Billy came out.

20 Q. Okay. Would you pull up Government's
21 Exhibit 817, please? And I believe this exhibit has
22 already been admitted.

23 Mr. Martinez, can you look at this
24 document, please?

25 A. Yes.

1 Q. And can you tell me, on December 28, 2000,
2 at 18:12 -- that's 6:12 in the afternoon; right?

3 Can you find that line. December 28, 2000?

4 A. Yes.

5 Q. And go to the top of that column. At the
6 top it says, "Start date and time"; right?

7 A. Yeah.

8 Q. That column is start time. The next
9 column is the end date time; correct?

10 A. I guess.

11 Q. Does it say "end date" right up there at
12 the top?

13 A. Yeah.

14 Q. Okay. Let's go back to December 28, 2000.
15 That's the start time when Mr. Quintana got to SP-1,
16 G-2203. And he left that unit on January 3, 2001;
17 correct?

18 A. Correct. I guess. That's what the paper
19 says.

20 Q. That's what the paper says. And the paper
21 then says the next time he came into a DOC facility
22 was December 17, 2015. So he was out of the
23 Department of Corrections; he wasn't in any prison
24 facility from January of 2001 to December 17, 2015.
25 So for 15 years he was not in custody of the

1 Department of Corrections according to this
2 document; right?

3 A. According to that document. But I know he
4 did arrive at Southern at that time and checked it
5 in.

6 Q. But the official document from the
7 Department of Corrections says that he did not;
8 right?

9 A. Yes, that's what it says.

10 Q. Thank you. You have a tablet; right?

11 A. Not no more.

12 Q. But you did for many, many months?

13 A. Yes.

14 Q. And you've had occasion to review that
15 tablet, haven't you?

16 A. Yes.

17 Q. You've reviewed the discovery. And tell
18 us again what discovery is.

19 A. The stuff that's against you.

20 MR. CASTELLANO: Objection, beyond the
21 scope of redirect.

22 THE COURT: What do you tie it to, to the
23 redirect?

24 MR. COOPER: I can, Your Honor. This is
25 with regard to -- he talked about the four people

1 who checked it in, and this is relative to one of
2 those four.

3 THE COURT: All right. Overruled.

4 BY MR. COOPER:

5 Q. So you've been able to review your
6 discovery, and the discovery is all of the documents
7 that have been produced by the Government to the
8 defendants; right?

9 A. Yes. I haven't reviewed every single
10 document.

11 Q. But in your review of that discovery, you
12 know that if you looked at document 21070 you will
13 see that Toby Romero was at PNM North on the date
14 these individuals were murdered; right?

15 A. He may have been. Word was already coming
16 down that Billy was coming, arriving to the prison,
17 right before he arrived. So, yeah, that was...

18 Q. So if you read that document -- and I
19 don't know if you remember that document, but that
20 document says that he was at PNM North -- do you
21 have any reason to disbelieve me?

22 A. I don't have no reason to.

23 Q. Okay. So two of the three people that you
24 said checked it in didn't check in, according to
25 either the discovery or the official document, and

1 that's Government's Exhibit 817; right?

2 A. Right.

3 MR. COOPER: May I have just a moment,

4 Your Honor?

5 THE COURT: You may.

6 MR. COOPER: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. COOPER:

9 Q. So Mr. Martinez, I'm showing you a
10 document that is identified as Bates No. 21070.

11 A. Bates?

12 Q. It's a document. Remember how in the
13 documents it shows down at the bottom the number?

14 A. Yes.

15 Q. That's called the Bates No.

16 A. All right.

17 Q. Okay. So this is Bates No. 21070. Can
18 you locate Toby Romero for me?

19 A. Yeah, I see him.

20 Q. And you also see that from the dates,
21 February 12, 2001, to August 10th, 2001, he was at
22 PNM, MRU B4; correct?

23 A. Correct.

24 Q. So he could not have been at Southern;
25 correct?

1 A. Correct. Word had been coming in
2 continuously to take care of these hits. And
3 everyone kept on putting them off. Everything was
4 running smooth, and everyone was, like, "No, let's
5 not hit him, let's not hit him."

6 Q. Okay.

7 A. But they kept on sending word from the
8 North. That's the hits, tomorrow. They say: "Hit
9 this dude. Hit this dude." And everyone is
10 avoiding it. They want drugs, they want visits,
11 they want conjugal visits, and they're avoiding it.
12 But when someone pulls up, it's business. It's
13 done. And that's what happened. God knows.

14 Q. But in this case, Toby Romero was not
15 there?

16 A. Not at that time, but he knew he had a hit
17 on him, and Billy was coming.

18 Q. You don't know that, though, do you?

19 A. Yeah, word was coming.

20 Q. Okay. And -- but word had already been
21 there, in fact, for a long, long time about Castillo
22 and Garza; right?

23 A. Oh, yeah.

24 Q. So word didn't have to come to hit
25 Castillo and Garza; right?

1 A. It was there, but people that were running
2 it --

3 Q. Thank you.

4 A. -- were choosing drugs.

5 Q. Okay. But that person left, and that was
6 Lino.

7 A. Yes.

8 Q. And he left on February 5, 2001?

9 A. Yes.

10 Q. Now, I want to talk about a couple of
11 other things. So you had an opportunity to testify
12 at your competency hearing, didn't you?

13 A. Huh?

14 Q. You could have?

15 A. I think I could have.

16 Q. But you didn't take that opportunity
17 because you knew that you would have to tell, if you
18 wanted to testify truthfully, the judge that you had
19 gone to Los Angeles and you exaggerated and you lied
20 with regard to your condition; right?

21 A. I didn't -- I just didn't testify. I
22 didn't know what I had to do.

23 Q. And it wasn't the first time you had lied
24 to a psychologist; right?

25 A. No.

1 Q. In fact, when -- you were found to be
2 incompetent by Dr. Harrington in 2013; correct?

3 A. Correct.

4 Q. And isn't it true that you told
5 Dr. Harrington, you described your father's death as
6 follows: Occurring when he was 10 years old --

7 MR. CASTELLANO: Objection to counsel
8 reading from the report, Your Honor.

9 Q. I can --

10 THE COURT: I think he's asking the
11 question correctly. So overruled.

12 MR. COOPER: Thank you, Judge.

13 BY MR. COOPER:

14 Q. So you described it as such: Your
15 father's death occurred when you were 10 years old.
16 You had been with your father and older brother at a
17 bar, when his father and the older brother got into
18 a fight as they were leaving the parking lot. He
19 described -- this is you saying -- described seeing
20 your father get shot and seeing his father bleeding.
21 He said that he then shook his older brother, who
22 did not respond to him.

23 None of that was true, was it?

24 A. I don't recall saying that, but --

25 MR. COOPER: May I approach, Your Honor?

1 THE COURT: You may.

2 A. -- I may have.

3 BY MR. COOPER:

4 Q. So Mr. Martinez, I'm showing you a
5 document. Do you recognize this document?

6 A. I don't recognize this document.

7 Q. Okay. Does this document appear to have
8 your name at the top of it?

9 A. It has my name.

10 Q. And it's titled "Competency to stand trial
11 evaluation."

12 A. Yes.

13 Q. And it has a couple of case numbers that
14 appear to be case numbers with regard to your
15 particular cases?

16 A. Yes.

17 Q. And throughout the document it refers to
18 Mr. Martinez?

19 A. Yes.

20 Q. And on page 3 it says, "Mr. Martinez
21 described his father's death as occurring when he
22 was 10 years old. He had been with his father and
23 older brother at a bar when his father and older
24 brother got into a fight as they were leaving the
25 parking lot. He described seeing his father get

1 shot and seeing his father bleeding. He said that
2 he then shook his older brother, who did not respond
3 to him." Is that what it says in this?

4 A. That's what it says. I may have
5 exaggerated.

6 Q. You might have exaggerated?

7 A. I may have exaggerated.

8 Q. The only truth in there was that your
9 father and brother were killed; correct?

10 A. Yes.

11 Q. But it wasn't when you were ten years old,
12 was it? You were 15, weren't you?

13 A. Probably about 15.

14 Q. And you didn't see a thing. You were not
15 in that parking lot, were you?

16 A. No, I was not.

17 Q. But you led Dr. Harrington to believe that
18 you were there; and that later on in that report,
19 isn't it true that you told Dr. Harrington that your
20 brother was your best friend and you were deeply
21 affected by his death?

22 A. He was my best friend. Even though we had
23 problems, we couldn't be with each other, we
24 couldn't be without each other. We would fight with
25 each other. When we were apart, we had to be

1 with -- it was -- it was a love-hate relationship.

2 Q. You didn't even live with him, did you?

3 A. No. I was on the streets, in and out of
4 juvies, wherever, from one place to another.

5 Q. So when you tell a lie like this or you
6 exaggerate, do you think maybe it helps the
7 psychologist come to the conclusion that you're not
8 competent?

9 A. Yeah, it probably made an impact that I
10 was incompetent, and that wasn't a good thing to do.

11 Q. It was not a good thing to do.

12 A. It wasn't.

13 Q. But yet, many, many years later you tried
14 to do the exact same thing in this courtroom to this
15 judge, didn't you?

16 A. I may have said that when we were
17 discussing it.

18 Q. Do we want to go back through all your
19 Johnson --

20 A. We discussed it, and I told her.

21 Q. Yeah, you told her.

22 A. The same thing.

23 Q. Because it worked the first time with
24 Dr. Harrington, you thought it was going to work
25 this time?

1 A. I thought maybe it would help.

2 Q. Then you could avoid the responsibility
3 for killing Looney, like you avoided the
4 responsibility for the four -- for the five, excuse
5 me -- cases that were pending in the Second Judicial
6 District Court in Albuquerque; right?

7 A. I knew I wouldn't just get off for a
8 murder charge. If the charges are not violent
9 charges, they would be dismissed and you will get
10 off. If there is bodily harm, a violent charge, you
11 are not going home. No, you won't go home.

12 Q. Which lawyer told you that?

13 A. Several lawyers.

14 Q. Your wife?

15 A. No. Real lawyers.

16 Q. So you testified on redirect that you only
17 had one prior conviction at the time the charges
18 were dismissed. Is that your testimony?

19 A. Yeah, I only went to prison one time, one
20 conviction --

21 Q. Okay.

22 A. -- that I remember.

23 Q. Okay. On July 30, 1994, you were arrested
24 for an armed robbery. And you were sentenced on May
25 10th, 1996, to nine years' custody, to run

1 consecutively to sentences imposed in another case;
2 correct? Do you remember that?

3 A. I think so.

4 Q. And then in 1995, you were convicted of
5 aggravated burglary, or you committed the aggravated
6 burglary, and you were convicted in 1996. Do you
7 remember that we went through these in much greater
8 detail -- and I don't want to do it again and waste
9 that kind of time with you -- but you had a number
10 of convictions. It wasn't just one conviction;
11 right?

12 A. They were juvenile convictions. I didn't
13 know juvenile convictions --

14 Q. You were asked if you had more than one
15 felony conviction. And you said, "No, I had one."

16 A. I didn't think about the juvenile
17 convictions. I figured from adult on.

18 Q. So you had the armed robbery that you were
19 convicted in 1996; you had an aggravated burglary,
20 also convicted in 1996; a possession of a deadly
21 weapon by a prisoner in 1998; right?

22 A. Yes.

23 Q. And you had another possession of a deadly
24 weapon by a prisoner in 1998; correct?

25 A. Yes.

1 Q. So that's four prior convictions, isn't
2 it?

3 A. Yes. I thought they all ran concurrent
4 with each other, and he put them all concurrent and
5 sent me to prison. That was my understanding. I
6 was told -- I'm not for sure about that.

7 Q. Okay. But in any case, you had four
8 separate crimes that you were convicted of; right?

9 A. Yes, but I figure they ran concurrent,
10 it's considered --

11 Q. One sentence?

12 A. When you get convicted and sent to prison,
13 I thought it was one conviction.

14 Q. Okay.

15 A. So I may have misunderstood it.

16 Q. And then you had five cases that you got
17 dismissed; right?

18 A. Correct.

19 Q. So has the Government gone to the DA in
20 Albuquerque to tell them about the evidence that
21 they've uncovered where you went to Dr. Johnson in
22 Los Angeles and you lied to her about your
23 competency and the fact that Judge Browning has
24 found that you're competent? Have they gone to tell
25 the DA in Albuquerque that this all has happened?

1 A. I don't know.

2 Q. Do you know if they've done anything to
3 help the DA in Albuquerque reinstate those charges
4 in those five cases that were dismissed because you
5 fraudulently got that order of incompetency?

6 A. I don't necessarily think I fraudulently
7 got it. I may have exaggerated on a few questions,
8 but that's what the doctor -- that was his decision.
9 That was his opinion.

10 Q. After hearing that you witnessed your
11 father and brother get shot and killed in a parking
12 lot and you saw that your father was bleeding and
13 your older brother was laying there in the parking
14 lot, and you shook him, you were there -- you
15 actually shook the body and the body didn't respond.
16 So all of that happens with Dr. Harrington, and you
17 don't think that that's a fraud?

18 A. That was one question out of hundreds, one
19 questioning, and they determined whether I'm
20 incompetent or not.

21 Q. But if you exaggerated on that one
22 question, did you exaggerate on all the others?

23 A. No.

24 Q. Okay. Let --

25 A. I may have exaggerated on a few, but not

1 all of them.

2 Q. Okay. Let's talk about Dr. Johnson.

3 A. All right.

4 Q. You exaggerated on all of those tests and
5 you tried to convince her that you were not
6 competent; right?

7 A. I basically didn't cooperate with her, and
8 I shut down on a lot of the tests. Just yes, no,
9 yes, no, yes, no, whatever, and just went through it
10 just to get out of there.

11 Q. You shut down and you lied about the
12 facts; right?

13 A. A few facts, yes.

14 Q. Important facts?

15 A. Just about -- not for facts about my
16 brother and my dad.

17 Q. That's not important?

18 A. It's important, but that one, that one lie
19 isn't going to determine a whole, you know, thing.

20 Q. You even lied to Dr. Westfried, didn't
21 you?

22 A. I don't -- I don't recall.

23 Q. Who is Dr. Westfried?

24 A. He's the doctor that interviewed me.

25 Q. And you and your defense team hired him to

1 evaluate you for purposes of this competency
2 hearing; correct?

3 A. Yes.

4 Q. And you submitted to an evaluation by him.
5 And then at the end of that evaluation, he wrote a
6 report; correct?

7 A. Yes.

8 Q. And he testified at the competency hearing
9 with regard to his findings in that report, didn't
10 he?

11 A. Correct.

12 Q. You don't think you lied to him?

13 A. I may have. I told you I lied before. I
14 lied about my father and my brother. They got
15 killed and I wasn't there, but I told the doctors
16 that I was.

17 Q. So he asked you to state the charges
18 against you. He wanted to find out if there was an
19 understanding of the charges and the potential
20 consequences that you were facing as a result of
21 this particular case; correct?

22 A. Correct.

23 Q. And when he asked you about that, you
24 said, "Yeah, there's all kinds of stuff. They have
25 all kinds of people hurt. Something about a cop. I

1 don't know how to read it." That's what you told
2 them; right?

3 A. Yes, there's all kinds of charges.

4 Q. Yeah. But you do know how to read; right?

5 A. Yeah, I know how to read.

6 Q. And then you went on to say that the guys
7 were talking saying something about a prison guard
8 getting hurt and about drugs. A long time ago
9 somebody got hurt in prison. Do you remember
10 talking about that to him?

11 A. There have been many, many prison guards
12 hurt. There was many killings on this indictment.
13 There was orders to hit cops. So there was lots.

14 Q. But my question is: Do you remember that,
15 your discussion with him about that?

16 A. I think so. I remember.

17 Q. And then you went on to say: "They have
18 me on all kinds of stuff. I don't know those guys.
19 I was with my mother, wife, my family. I'm at home.
20 I don't know nothing about prison guard or cop shot.
21 I'm at home with my chickens, my animals. Remember,
22 I said I didn't sleep for four months. They had me
23 here for something I didn't do." That's not true,
24 is it?

25 A. That's not true. But I --

1 Q. And then you were asked -- excuse me.

2 You were asked about your understanding of
3 the trial process. And your response was: "I don't
4 know. Please -- tell them, please, don't send me to
5 jail. I didn't do this. Help me."

6 That was your response to Dr. Westfried;
7 right?

8 A. I've never been in trial, so I didn't
9 understand the trial process.

10 Q. But importantly, there, you were talking
11 about how you didn't do this.

12 A. Yes.

13 Q. And you were referring to the murder of
14 Looney; right?

15 A. I was in denial. I was trying to deny it
16 and say that I didn't do it.

17 Q. And this was in March of 2017?

18 A. Yes.

19 Q. Just a couple of months before you entered
20 a plea?

21 A. Yes.

22 Q. Later on, in another place, you were asked
23 about your ability to assist counsel. And you
24 response -- and part of that discussion you said, "I
25 didn't do it. I want to go home and be with my

1 family and go fishing. I didn't do it"; right?

2 A. Right.

3 Q. You're lying to them, aren't you?

4 A. Yes. I didn't want to admit to doing it.
5 I didn't want to go to prison.

6 Q. You were then asked what evidence that you
7 thought there was against you with regard to this
8 case, and you said, "I don't know. Nobody told me";
9 right?

10 A. Right. There was no evidence.

11 Q. So Mr. Couleur didn't tell you what sort
12 of evidence there was against you?

13 A. Yeah, he explained that there was --

14 Q. So if he explained --

15 A. Right.

16 Q. So if he explained it to you, then you
17 telling the doctor that you don't know, nobody told
18 you about the evidence, is a lie, isn't it?

19 A. Before? Before I was found competent --

20 Q. Yes or no, is that a lie?

21 A. It's a lie.

22 Q. Okay. You went on to say that you took a
23 picture of somebody who was part of a group, "maybe
24 just because some -- because I knew somebody. If I
25 didn't do nothing, what are they going to say that

1 they have? I don't understand." You got agitated
2 and you said, "I don't know what to say or do."

3 You just felt that you didn't do anything;
4 right?

5 A. I didn't want to admit to being involved
6 with this group. I didn't want to admit to being
7 involved with this crime, so I lied.

8 Q. You were asked if you had read any of the
9 law enforcement reports, asked if you had any
10 discovery in the case, and you said, "Well, they
11 gave me a thing. I don't understand it."

12 The thing was the tablet, I presume, and
13 that was a lie; right?

14 A. They gave me a tablet. And I was
15 learning -- I didn't know how to fully operate it,
16 and I was getting shown how to use it.

17 Q. Okay. But I guess my question was: It's
18 a lie when you told him that you had not read the
19 discovery, and nobody had given you the discovery,
20 and you hadn't read any police reports. Because
21 we're now in March of 2017, and you had the tablet
22 for many, many months; right?

23 A. I think so.

24 Q. You were asked if you thought you might be
25 able to help your lawyer. And isn't it true you

1 responded, "I don't know. For what? I didn't do
2 it. Why do we have to go through this? This sounds
3 like a bunch of hogwash to me."

4 Again, you're denying it; right?

5 A. Correct. I did not.

6 Q. And that's a lie; right?

7 A. Correct.

8 Q. Not truthful?

9 A. Correct.

10 Q. And throughout this process you continued
11 to lie to Dr. Westfried and tell him you didn't do
12 anything, and you shouldn't even be here; right?

13 A. Correct. I didn't want to be here.

14 MR. COOPER: Your Honor, I would move the
15 admission of Defendants' BX-1, BX-2, BX-3, and BX-4.

16 THE COURT: Your thoughts on that, Mr.
17 Castellano?

18 MR. CASTELLANO: I object. Those are only
19 used for purposes of impeachment, and otherwise
20 inadmissible.

21 THE COURT: I think that's correct, so I
22 will keep those out.

23 MR. COOPER: Thank you, Your Honor.

24 BY MR. COOPER:

25 Q. You said that the STG knew about the hits

1 on Pancho and Looney. How long did they know about
2 those hits?

3 A. I was told a few months in advance. And
4 when Looney was in at the MRU, and when he came
5 over, they immediately made him sign a waiver,
6 because they said: "There's word on the compound
7 that you have problems. If you come out, you have
8 to sign a waiver. And if you get killed, that's on
9 you." Signed it, and it came out.

10 Q. So they knew for a long time about both
11 Looney and Castillo?

12 A. Yeah. They confronted many people, and
13 told them: "We hear there is a hit on you. You got
14 to sign a waiver, or we're going to lock you up."

15 Q. On you?

16 A. No, not on me. They do that when they
17 hear of hits on people. You have to sign a waiver,
18 so if you get killed, you can't sue, or shit like
19 that.

20 Q. So if STG knew there were hits on those
21 two guys, everybody in the compound knew; right?

22 A. Yeah.

23 MR. COOPER: Thank you, Mr. Martinez. I
24 have no further questions.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Cooper.

2 Mr. Castellano, do you have --

3 MR. LAHANN: Your Honor --

4 THE COURT: Yes, Mr. Lahann.

5 MR. LAHANN: May I recross?

6 THE COURT: You may.

7 RECROSS-EXAMINATION

8 BY MR. LAHANN:

9 Q. In the photos that I showed you a while
10 ago, you have a lot of tattoos on your body; isn't
11 that right?

12 A. If that's what the photo showed.

13 Q. Well, do you or do you not have a lot of
14 tattoos on your body?

15 A. Yes, I do.

16 Q. And you got most of those because -- that
17 was back in 2001, you were about 22, 23?

18 A. A little bit younger than that.

19 Q. And you'd been institutionalized pretty
20 much since you were about, what, 16?

21 A. Pretty much.

22 Q. So it's fair to say you got those tattoos
23 in prison; isn't that right?

24 A. Every single one of them.

25 Q. Now, in prison, they don't let you check

1 out tattoo pens; right?

2 A. No.

3 MR. CASTELLANO: This is beyond the scope
4 of redirect.

5 MR. LAHANN: Your Honor, if I may have
6 some leeway. I will tie this in in a few more
7 questions, Judge.

8 THE COURT: All right.

9 BY MR. LAHANN:

10 Q. It's not lawful to have a tattoo pen like
11 you would find in a licensed tattoo parlor. You
12 can't have that in prison, can you?

13 A. No, you can't have a lot of things that we
14 had.

15 Q. And so you have to improvise; isn't that
16 right?

17 A. Correct.

18 Q. And for example, a tattoo pen, you would
19 take maybe a motor from a toothbrush, and a pen, or
20 something like that; isn't that right?

21 A. Correct.

22 Q. As a matter of fact, you are learning that
23 art yourself; isn't that right?

24 A. Yes.

25 Q. Okay. In prison, you don't have Scotch

1 tape, did you?

2 A. No.

3 Q. You didn't have thumb tacks, did you?

4 A. You know what? We were allowed to have
5 tape. I had tape.

6 Q. You said no when I first asked you. But
7 you know where I'm going with this, don't you?

8 A. I just thought about it. I was in the art
9 class. In the art class, we were allowed to have a
10 lot of stuff.

11 Q. And as long as you keep it in the art
12 class; but you can't bring the supplies from art
13 class back to the pod, can you?

14 A. No. If you file a request and you're in
15 the art room, they will grant you to have art
16 supplies in your room.

17 Q. Most inmates are not part of the art
18 programs, are they?

19 A. No, but I was.

20 Q. Okay. And I'm glad that you were.

21 MR. LAHANN: Can we show 24A, which has
22 been admitted?

23 MR. CASTELLANO: That has not been
24 admitted, Your Honor.

25 MR. LAHANN: Yes, it was, at the bench.

1 THE COURT: I admitted it at the bench
2 here.

3 MR. CASTELLANO: That's okay.

4 BY MR. LAHANN:

5 Q. Now, you were in Mr. Garza's cell at least
6 on one occasion; isn't that right?

7 A. Yes. I'm going through the pictures.

8 Q. And so -- and he had a lot of pictures.
9 And at that time those were legal; isn't that right?

10 A. Yeah, we were allowed to have magazines.

11 Q. These days you can't do that anymore, but
12 back then that was legal; right?

13 A. Correct.

14 Q. No Scotch tape, no thumb tacks. So what
15 do those prisoners use to hang up their posters?
16 Can I see 25-A?

17 A. Do you want me to answer?

18 Q. They use toothpaste, don't they?

19 A. You can use toothpaste. You can get black
20 stuff from around the window, the sticky stuff.

21 Q. Toothpaste is something you can buy in
22 your canteen; isn't that right?

23 A. What?

24 Q. You can buy toothpaste in your canteen
25 every week.

1 A. Oh, yes, of course.

2 Q. Most inmates improvise, and they hang
3 their pictures with toothpaste, don't they?

4 A. Yeah. You can get the stickers around the
5 deodorants and shampoos and whatnot, the sticky
6 stuff.

7 MR. LAHANN: No further questions.

8 THE COURT: All right. Thank you,
9 Mr. Lahann.

10 Mr. Castellano, do you have redirect of
11 Mr. Martinez?

12 MR. CASTELLANO: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CASTELLANO:

15 Q. So you mentioned toothpaste being on the
16 countertop earlier. Do you remember that?

17 A. Yes.

18 Q. Is that a picture of a toothpaste tube we
19 saw on the countertop?

20 A. That toothpaste tube in that picture was
21 the morning of that incident. There it was, open,
22 like I told you.

23 Q. And do you know what Mr. Garza used to
24 hang up those posters?

25 A. I don't.

1 Q. Just a few topics. You were asked about
2 green lights. If there is a green light in place,
3 does it help if there's someone in place who is
4 going to enforce that green light?

5 A. Yeah. That green light means nothing if
6 the person in charge is trying to keep the peace or
7 has his mind elsewhere.

8 Q. And you mentioned other potential hits
9 that were looming at the facility. But what
10 happened after these two murders took place, to the
11 facility?

12 A. They locked down the facility. They
13 brought in -- they shut it down, and they basically
14 locked up all the SNMers.

15 Q. Did that make it more difficult to execute
16 SNM hits?

17 A. Yes, for the meantime.

18 Q. A little bit of time ago you mentioned the
19 whites hitting the whites, and the blacks hitting
20 the blacks. How did it generally work with gangs
21 cleaning their own houses?

22 A. They just go, and anyone that has bad
23 charges, bad charges, or that are snitches, or that
24 have violated some way or another, they -- not all
25 the time is it a murder. Sometimes it's a beating,

1 and sometimes they could get jumped and stay in good
2 standing. Sometimes they get beat up and they're
3 out of the sentence. And sometimes they get killed.
4 It depends on the severity.

5 Q. Is that something involving discipline
6 within a gang itself?

7 A. Yes.

8 Q. So were there times when gangs cleaned
9 their own houses?

10 A. Yes.

11 Q. You mentioned that word was coming down
12 that Billy Garcia was arriving?

13 A. Yes, there was word for months that he was
14 coming down. Because they kept sending word over
15 there to clean house. But the people that were
16 there, they weren't following -- following through
17 with it.

18 Q. Was one of the people who mentioned word
19 coming down Leroy Lucero?

20 A. Yes.

21 MR. CASTELLANO: I pass the witness, Your
22 Honor.

23 THE COURT: Thank you, Mr. Castellano.

24 All right. Mr. Martinez, you may step
25 down.

1 Is there any reason that Mr. Martinez
2 cannot be excused from the proceedings?
3 Mr. Castellano?

4 MR. CASTELLANO: No, Your Honor.

5 THE COURT: Any objection from the
6 defendants to him being excused?

7 All right. Not hearing or seeing any,
8 Mr. Martinez, you're excused from the proceedings.
9 Thank you for your testimony.

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2 UNITED STATES OF AMERICA

3 STATE OF NEW MEXICO
4

5 C-E-R-T-I-F-I-C-A-T-E

6 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
7 Official Court Reporter for the State of New Mexico,
8 do hereby certify that the foregoing pages
9 constitute a true transcript of proceedings had
10 before the said Court, held in the District of New
11 Mexico, in the matter therein stated.

12 In testimony whereof, I have hereunto set my
13 hand on this 16th day of May, 2018.
14

15
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